

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 452.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

MERCHANTS AND MANUFACTURERS TRAFFIC ASSOCIATION OF SACRAMENTO ET AL. •

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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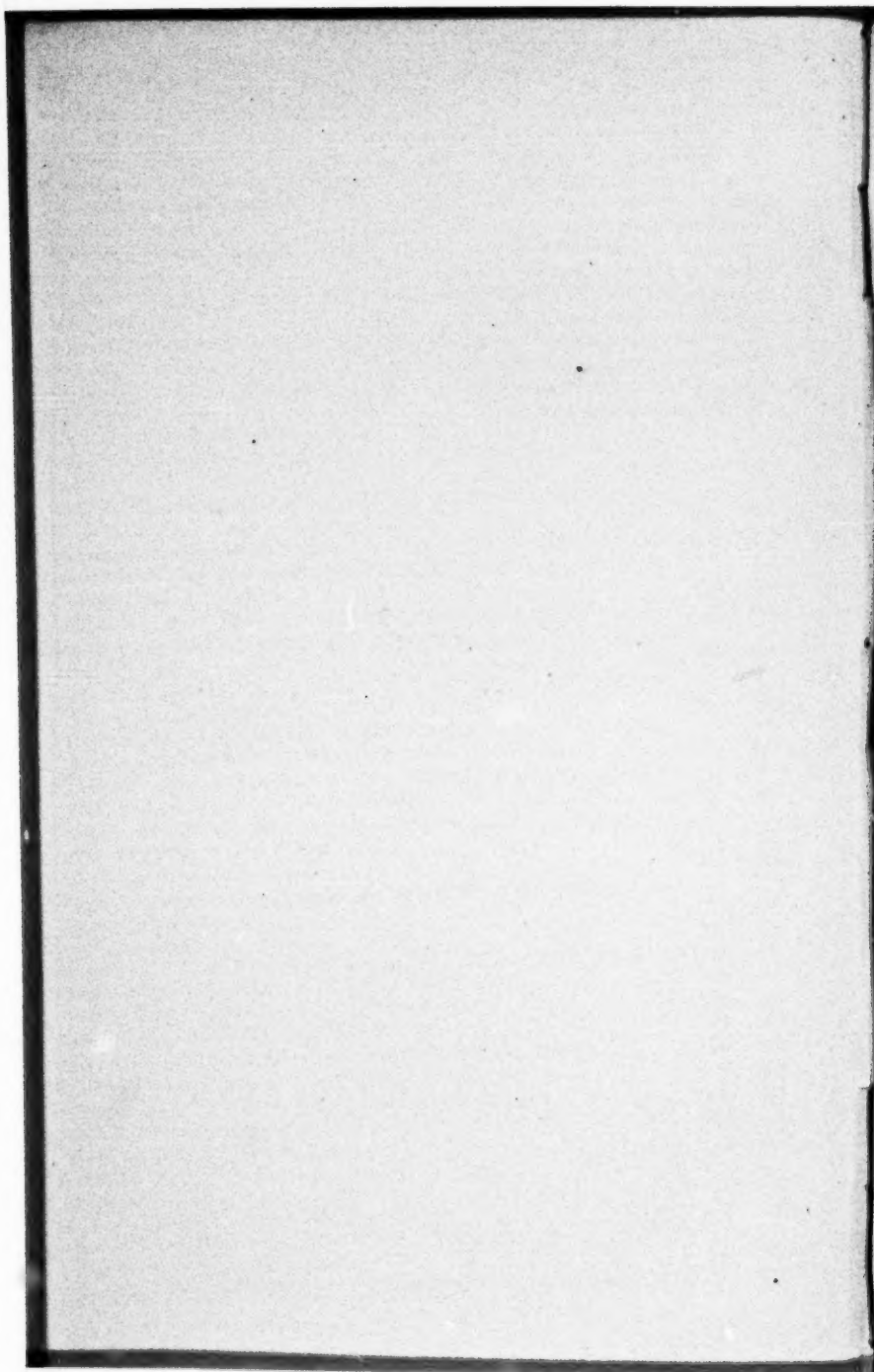
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- 1 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION OF Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Atchison, Topeka & Santa Fe Railway Company Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

Petition for injunction and cancellation of order.

To the judges of the above court:

The Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, and Stockton Traffic Bureau, duly organized and existing associations of their respective cities as above mentioned, and the city of Santa Clara, a municipal corporation and body politic of the State of California, bring this petition against the United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, and thereupon complain and say:

I.

The Merchants' and Manufacturers' Traffic Association of Sacramento is a duly organized association with its headquarters and address at the city of Sacramento, State of California. The Stockton Traffic Bureau is a duly organized association with its headquarters and address at the city of Stockton, State of California. The Traffic Bureau of San Jose Chamber of Commerce is a duly organized association with its headquarters and address at the city of San Jose, State of California. That each of said associations is composed of a large membership comprising the principal merchants, mercantile firms, manufacturing concerns, wholesale companies, business men, and dealers in their respective communities, and the object of each of said associations are, among other things, to foster and encourage commerce, to promote the welfare of the community, to induce manufacturers and business concerns to locate in their respective communities, to secure the expansion of trade, manufacture, and commerce, and especially to secure better railroad rates

and facilities to the said cities of Sacramento, Stockton, and San Jose.

II.

The city of Santa Clara is a duly organized and existing body politic, to wit, a municipal corporation, the residents and tax payers of which are engaged in varied lines of industry, including wholesale trade and manufacture, and are directly and financially interested in the shipment of commodities to said city and in the amount of the railroad charge therefor, and said city and the residents and tax payers thereof are desirous of securing better railroad facilities and rates to said community.

III.

The Atchison, Topeka & Santa Fe Railway Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Kansas. It now is and for a number of years last past has been operating lines of railroad from points in the States of Illinois, Iowa, Missouri, Kansas, Oklahoma, Colorado, Texas, New Mexico, and Arizona to and into various cities and towns in the State of California with lines extending or connecting with lines extending to other parts in said State, including the cities of San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission, to which tariffs and supplements reference is hereby specially made and the same are made a part hereof by reference. Said railway company now is and for a number of years last past has been engaged in the transportation of freight and passengers between various points on its lines of railroad and between points in different States of the United States as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

IV.

The Chicago, Rock Island & Pacific Railway Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Illinois; it now is and for a number of years last past has been operating lines of railroad between points in the State of Colorado and points in the States of Kansas, Iowa, Missouri, Illinois, and other States of the United States, and connects with other lines of railroad, which, with connections, are and have been engaged in the transportation of freight and passengers from the points before mentioned to various points in the State of California, includ-

ing San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

V.

The Denver & Rio Grande Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Colorado; it now is and for a number of years last past has been operating lines of railroad between points in the State of Colorado and points in the State of Utah and other States of the United States, and connects with other lines of railroad, which, with connection, are and have been engaged in the transportation of freight and passengers from the points before mentioned to various points in the State of California, including San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such
5 common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

VI.

The Southern Pacific Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Kentucky; it now is and for a number of years last past has been operating lines of railroad in connection with other railroads from points in the States of Texas, New Mexico, Arizona, Utah, and other States of the United States and various points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions

of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

VII.

The Union Pacific Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Utah; it now is and for a number of years last past has been operating lines of railroad from points in the States of Nebraska, Kansas, Colorado, and other States of the United States to points in the State of Utah as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

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VIII.

The Western Pacific Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of California; it now is and for a number of years last past has been operating lines of railroad from points in the State of California and in connection with other lines of railroad herein mentioned has been engaged in the transportation of freight and passengers from points in the other States of the United States before mentioned to points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

IX.

The Chicago, Rock Island & Pacific Railway Company connects with the Union Pacific Railroad Company and the Denver & Rio Grande Railway Company, which last-named companies connect with the Southern Pacific Company and the Western Pacific Railway Company and form through lines of transportation for freight and passengers from Missouri River points to various points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the hereinbefore referred to California terminals.

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X.

Petitioners are informed and believe, and upon such information and belief allege, that the above-named railroad companies have

mutually established through joint rates for the carriage by rail of persons and property to various points within the State of California, including San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, from points in the States of Nevada, Utah, Wyoming, Colorado, Arizona, New Mexico, Texas, Oklahoma, Louisiana, Mississippi, Arkansas, Missouri, Kansas, Nebraska, Iowa, Illinois, and other States of the United States, including Missouri River points and points on the Atlantic seaboard, and are participating carriers in the transportation of persons and property as aforesaid.

XI.

The cities of San Jose, Santa Clara, Sacramento, and Stockton, California, for a number of years last past have been designated as California terminals, and were so designated in Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, which last-named tariff is effective at this date, as well as in preceding tariffs, and as such terminal points are now enjoying and have heretofore enjoyed terminal rates upon transcontinental westbound freight, and will continue to enjoy such terminal rates until July 15, 1915, and would thereafter continue to enjoy such terminal rates except for the order of the Interstate Commerce Commission and the withdrawal of said terminal rates from said cities of San Jose, Santa Clara, Sacramento, and Stockton by the defendant railroad carriers, pursuant to such order of the Interstate Commerce Commission as hereinafter set forth. A copy of said order of the Interstate Commerce Commission, dated April 29, 1915, is attached to this petition, marked "Exhibit B," and is herein specially referred to and made a part hereof. A copy of the findings and decision of the Interstate Commerce Commission pursuant to which the said order was made is attached to this petition, marked "Exhibit A," and is herein specially referred to and made a part hereof.

XII.

The city of Sacramento has a population of over 60,000. It is located upon the main lines of the Southern Pacific Company and the Western Pacific Company, both transcontinental carriers, and is also reached by joint through lines via the Atchison, Topeka & Santa Fe Railway, in connection with the Central California Traction Company via Stockton, California, and the Oakland, Antioch & Eastern Railway via Bay Point, California. Sacramento is located upon the Sacramento River, a navigable waterway, and deep-draught ocean-going vessels, with full cargoes, have docked within the limits of said city. The Sacramento River is navigable for deep-water vessels during the greater portion of the year and

four regular lines of steamers now operate between San Francisco and Sacramento, two of said steamer lines operating daily, one line triweekly, and the other semimonthly.

XIII.

The city of Stockton has a population of over 42,000. It is located on the main lines of the Southern Pacific Company, the Western Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, all of which are transcontinental rail carriers. Stockton is also located upon the San Joaquin River, a navigable waterway accessible to deep-draught vessels during the greater portion of the year and upon which two regular lines of steamers
9 ply daily throughout the year between said city of Stockton and San Francisco.

The Government of the United States also maintains a channel leading from the San Joaquin River to the center of the city of Stockton to a depth from November to August of 14 feet and at no time of less than 9½ feet.

XIV.

The cities of San Jose and Santa Clara are adjoining and have a combined population of over 43,000. They are both located on the main line of the Southern Pacific Company from all eastern points via Los Angeles to San Francisco and Oakland; also on the main line of the Southern Pacific Company from eastern points and Utah via Niles to San Francisco.

San Jose and Santa Clara are both important manufacturing and jobbing centers, and there is shipped to such points each year from Missouri River points and other points further east a vast amount of freight, from which the Southern Pacific Company enjoys a large revenue.

The city limits of San Jose extend to the town of Alviso, herein-after mentioned, and to deep water on San Francisco Bay, at which point the Government has caused a survey to be made and the Army engineers in charge of such work have recommended extensive improvements for deep-water shipping. The State of California has created a board of harbor commissioners to the port of San Jose, which commission has been appointed and is now attending to the duties of its office.

XV.

The town of Alviso lies at the southern end of San Francisco Bay, on deep tide water, accessible at all times of the year to boats of deep draught. The commercial center of Santa Clara is about four miles south of Alviso, and the commercial center of San Jose is about six miles to the south, and there is between all of said points direct

10 communication by rail and by an extremely good and level wagon road.

Freight from the eastern seaboard has been brought to the Pacific coast by boat destined for San Jose and Santa Clara, and the same has been and now is being landed at Alviso, from which point it is hauled by dray or motor truck direct to the consumer. San Jose and Santa Clara are distributing centers, distributing to points adjacent to and north of Alviso, points more accessible from Alviso than from San Jose or Santa Clara. The merchants of San Jose and Santa Clara for more than half a century past have maintained warehouses at Alviso, from which they have and do distribute direct to the door of the consumer, thus reducing further transportation charges. The drayage from Alviso to the consumer in San Jose and Santa Clara has always been and still is considered a part of the carriage by water and the cost thereof borne by the water carrier.

XVI.

San Jose, Santa Clara, Sacramento, and Stockton historically were and now are entitled to terminal rates, and an increase thereof would be unjust and unreasonable. Terminal rates were extended by the rail carriers to the cities mentioned because of the controlling competition with water carriers and for no other reason, and no changed conditions or other conditions have since arisen as a cause why such rates should be increased, and the four cities mentioned and the complainants herein would suffer irreparable damage and injury if the terminal rates thereto should be withdrawn. Freight from the eastern portion of the United States was transported by ocean carriers around the Horn or across the Isthmus of Panama, and such freight was landed within the limits of the cities above named by the water carriers long before the advent of the railroads in California.

11 It was this controlling water competition that caused the rail carriers to extend terminal rates to the four cities mentioned.

XVII.

A vast volume of transcontinental westbound freight is shipped daily into San Jose, Santa Clara, Sacramento, and Stockton, in value amounting to millions of dollars per year. Large and extensive industries have located at the cities mentioned because of settled conditions and the fact that said points had terminal rates. The growth and prosperity of said communities have been built up and are dependent upon such terminal rates. The cities mentioned are manufacturing and distributing centers and come into active competition with the other cities in California, especially with San Francisco and Oakland. The local rate from San Francisco to Sacramento is graded on a scale of 24¢ per hundred pounds, to Stockton formerly on the scale of 10¢ but with a scale of 18¢ now authorized, and to San Jose and Santa Clara on a scale of 7¢. If the ter-

terminal rates are taken from the cities mentioned, then the dealers therein would be compelled to pay the local back haul from San Francisco (less 25% of the same in some instances as hereinafter mentioned), which would amount to several hundred thousand dollars per year. Further, this additional cost would leave the dealers and manufacturers in the cities mentioned unable to meet the competition from San Francisco and Oakland, and such increase in the freight rates would be and is unreasonable, unjust, and unduly discriminatory as to San Francisco and Oakland, and such increase in freight rates would be confiscatory of large and extensive wholesale, manufacturing, and other industries in San Jose, Santa Clara, Sacramento, and Stockton, and would cause them irreparable damage and injury.

XVIII.

12 The rail carriers, because of competition with water routes and water carriers as aforesaid, reduced the rate on the carriage of westbound transcontinental freight to San Jose, Santa Clara, Sacramento, and Stockton, and extended terminal rates to such points on such freight because of the aforesaid water competition, which said competition always has and now does exist.

No changed conditions now exist or at any time have existed to cause the rail carriers to withdraw terminal rates from the four cities mentioned, or to increase the rates to said points, and complainants aver that an increase of rates by the rail carriers to the four cities mentioned will be contrary to the provisions of section 4 of the act to regulate commerce.

XIX.

The Santa Rosa Traffic Association, of Santa Rosa, California, filed a complaint before the Interstate Commerce Commission alleging discrimination as to some eleven points designated as California terminals and, after a hearing had in said matter, the Interstate Commerce Commission, on the 5th day of January, 1914, made its order requiring the rail carriers to cease and desist, on or before April 1, 1914, and for a period of not less than two years thereafter, or as long as terminal rates should be extended to San Jose and Santa Clara, to abstain from charging, demanding, collecting, or receiving contemporaneously any greater rate or rates for the transportation of westbound transcontinental freight to Santa Rosa, California, than they charged for the transportation of west-bound transcontinental freight to San Jose and Santa Clara. The cities of Sacramento and Stockton were not mentioned either in the petition of Santa Rosa or in the order of the Interstate Commerce Commission. The aforesaid order was by the said commission from time to time suspended and is not as yet in effect.

13 By the aforesaid order the rail carriers were required to file tariffs thirty days prior to April 1, 1914, and to establish,

maintain, and apply to the transportation of westbound transcontinental freight to Santa Rosa, California, rates not higher than those contemporaneously charged for the transportation of like freight from the same points of origin to San Jose and Santa Clara. Under the aforesaid order the rail carriers were not directed to increase the freight rates to San Jose and Santa Clara, but were ordered to remove the alleged discrimination. Exercising their option, the rail carriers, prior to the suspension of the above-mentioned order, filed tariffs whereby the rates to San Jose and Santa Clara were increased on westbound transcontinental freight to the extent of the local haul back from San Francisco, which is graded on a 7¢ per hundred-pound scale. San Jose and Santa Clara protested against said increase in freight rates and a hearing was had as to the propriety of such increase, and the lawfulness of the rates, charges, regulations, and practices set forth in said tariffs was investigated. In said matter the Interstate Commerce Commission, on the 29th day of December, 1914, ordered the cancellation of the aforesaid tariffs which increased the freight charges to San Jose and Santa Clara. The tariffs mentioned are set forth in the order of the commission, which is in the words and figures following, to wit:

“Order.

“At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of December, A. D. 1914.

“Investigation and Suspension Docket No. 405. Transcontinental commodity rates to San Jose, Santa Clara, and Marysville, Cal.

14 “SAN JOSE CHAMBER OF COMMERCE ET AL.

v.

“THE ATCHISON, TOPEKA & SANTA FE RAILWAY
Company et al.

No. 6717.

“It appearing that on March 16, 1914, the commission entered upon an investigation concerning the propriety of the increase and the lawfulness of certain rates, charges, regulations, and practices stated in schedules designated as follows: R. H. Countiss, agent, supplement No. 26 to I. C. C. No. 952, supplement No. 17 to I. C. C. No. 956, supplement No. 3 to I. C. C. No. 974, supplement to No. 7 to I. C. C. No. 975, supplement to No. 5 to I. C. C. No. 976, supplement No. 5 to I. C. C. No. 978, I. C. C. No. 989; C. C. McCain, agent, supplement No. 26 to I. C. C. No. 6, I. C. C. No. 14; Eugene Morris, agent, supplement No. 26 to I. C. C. No. 344, I. C. C. No. 465, and subsequently ordered that the operation of certain parts of said schedules be suspended until January 30, 1915;

“It further appearing that a full investigation of the matters and things involved has been had, and that the commission, on the date

hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered that the carriers respondent herein and designated in said schedule be, and they are hereby, notified and required to cancel, on or before January 30, 1915, the rates and charges stated in the items of the schedules specified in said orders of suspension.

"By the commission.

"[SEAL.]

GEORGE B. MCGINTY,

"Secretary."

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XX.

Because of a complaint filed by the Railroad Commission of Nevada, the Interstate Commerce Commission heretofore entered upon an investigation of west-bound freight charges to the intermountain country. In its decision in the Intermountain cases (so-called), the commission determined that the rates in effect, terminal and intermediate, were reasonable in themselves; and in those cases the situation of San Jose as a terminal point and as being entitled to terminal rates was considered and accepted as proper. See 19 I. C. C. 238, at page 240; 21 I. C. C. 329, at pages 343, 344.

Sacramento and Stockton were likewise accepted and considered as proper terminals.

XXI.

Following the decision and order in the Intermountain cases, the rail carriers petitioned the Interstate Commerce Commission for permission to file new tariffs wherein lower rates would be charged on certain transcontinental westbound commodities especially designated in said petition. A hearing of said matter was had in Chicago beginning October 6, 1914. No notice of said hearing was given to any of the four cities above mentioned or to any of the mercantile concerns or associations therein, nor were any of them brought in or made parties to said proceeding. Following said hearing, the Interstate Commerce Commission, on the 29th day of January, 1915, made its order wherein it granted the rail carriers the right to charge lower rates on certain westbound transcontinental freight to Pacific coast terminals and to continue higher rates to intermediate points, the rates to Pacific coast terminals from the Missouri River and all points east thereof to be the same, but to intermediate

16 diate points the carriers were allowed to charge based upon the Missouri River, an additional charge from Chicago points a further additional charge from points on the Atlantic seaboard. It was further ordered that the Pacific coast terminals in California, in so far as that order was concerned, should consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, California, only. Said order is in the following

words and figures, except that a summary is given of certain boundaries for the sake of brevity and convenience, viz:

“Order.

“At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of January, A. D. 1915.

“Amended fourth section order No. 124. In the matter of applications Nos. 205, 342, 343, 344, 349, 350, and 352, on behalf of carriers parties to the tariffs therein named, by R. H. Countiss, C. W. Bullen, and J. F. Tucker, their agents, for relief from the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910, with respect to commodity rates from eastern points or shipment which are higher to intermediate points than to Pacific coast terminals.

“Commodity rates.

“A public hearing having been held with reference to the justification for the additional relief sought by the carriers respecting the rates on the commodities listed under schedule C, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

17 “It is ordered, That, effective May 1, 1915, Fourth Section Order No. 124, amendments thereof and supplements thereto be, and they are hereby, amended to read as follows:

“It is ordered, That for the purpose of disposing of these applications the United States shall be divided into five zones, known as zones 1, 2, 3, 4, and 5. On traffic to California terminals, zone 1 shall include all that territory of the United States lying west of the following line: (This line may be summarized by saying that it is a boundary of Missouri River points.)

“On traffic to California terminals, zone 2 shall include all that territory lying east of line (a) above described and west of a line called line (c), which begins at the international boundary between the United States and Canada immediately west of Cockburn Island in Lake Huron; passes westerly through the Straits of Mackinaw; southerly through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to its intersection with the south boundary of group C; thence follows the east boundary of group C to the Gulf of Mexico.

“On traffic to the north coast terminls, zone 2 shall include all territory lying between lines (b) and (c).

“Zone 3 includes all territory in the United States lying east of line (c) and north of the south boundary of transcontinental group

C and on and west of line (d), which is the Buffalo-Pittsburgh line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of trunk-line freight association territory; thence follows the Ohio River to Huntington, W. Va.

"Zone 4 includes all territory in the United States east of line (d) and north of the south boundary of transcontinental group C.

"Zone 5 includes all that territory in the United States
18 south and east of transcontinental group C.

"It is further ordered, That those portions of the above-numbered applications that requested authority to maintain higher commodity rates, except upon commodities as hereinafter specified, from points in zone 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective May 1, 1915.

"It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from all points in zones 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals, provided that on and after May 1, 1915, except as hereinafter specified, the rates to intermediate points from points in zones 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4.

"It is further ordered, That the petitioners herein be, and they are hereby, authorized to established the carload rates proposed in their application, as shown in the appendix to this report, on the following commodities: Calcium chloride, No. 485; iron and steel articles, No. 20304; iron and steel articles, Nos. 2065, 2335, 2340; billets, blooms, ingots, etc., No. 2075-A; bolts, nuts washers, etc., No. 2110; nails and spikes, No. 2245-C; pipe fittings and connections, No. 2260-A; cast-iron pipe and connections, No. 2265; wrought-iron pipe, No. 2270-A; cast-iron pipe and connections (new number); iron and steel articles, Nos. 2080 and 2085; box straps, shingle bands, baling ties, Nos. 2115, 2370-B, and 2430-B; shoes, horse, mule, and oxen, No. 2375; tubing, open seam, n. o. s., No. 2445; strawboard, n. o. s., No. 3325; ship and boat spikes, No. 3960; soda ash, No.
19 4045-A; tin and terne plate, No. 4375-A; wire and wire goods, No. 4780-B; wire, iron, plain, galvanized, etc., No. 4795-D; wire rods, No. 4825; zinc spelter, No. 4885; steel rails, No. 1340; rail fastenings, No. 1341, from points in zone 1 to Pacific coast terminals which are lower than the rates on like traffic to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points in no instance exceed 75 cents per 100 pounds.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish or continue the carload rates proposed in their application for additional relief as shown in the appendix to this report on all the commodities listed under schedule C, except rice, window glass, saws, saw plates, stacker ladders, coal, and pig

iron, shown in the appendix to this report as items Nos. 3650, 1695-A, 3845, 3860, 4095, 850, 2255-A, and except also the 27 items concerning which the application for additional relief has been withdrawn from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates on the same commodities to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 15, 25, and 35 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

"It is further ordered that the request for additional relief respecting the rates on rice, window glass, saws, saw plates, and stacker ladders, shown as items Nos. 3650, 1695-A, 3845, 3860, and 4095 in the appendix to this report, be, and the same is hereby denied, effective May 1, 1915.

"It is further ordered that the petitioners herein be, and they are hereby, authorized to establish and maintain the rates proposed in their application as shown in the appendix to this report on 20 coal and pig iron to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to such intermediate points do not exceed 5 mills per ton-mile.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates named in their application for additional relief, as shown in the appendix to the report, from points in zone 1 to Pacific coast terminals, and to continue higher rates to intermediate points on all articles listed as first or second class in western classification upon which the rates to the terminals are less than \$1.50 per 100 pounds, and on all articles listed as third or lower class on which the rates to the terminals are less than \$1.25 per 100 pounds, provided that on and after May 1, 1915, the rates to intermediate points on all such first and second class articles do not exceed \$1.50 per 100 pounds, and on all such third and lower class articles \$1.25 per 100 pounds.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates proposed in their application for additional relief, as shown in the appendix to this report, from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

"It is further ordered that the degree of deviation herein permitted as between the terminal rates herein approved and the maximum intermediate rates herein authorized shall be the maximum amount by which these petitioners are permitted to depart from the 21 rule of the fourth section, and the disparity between the rates to the terminal points and to intermediate points shall not be widened except under further orders of the commission.

"It is further ordered that in the observance of this order as to the rates on schedule C commodities the Pacific coast terminals shall consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, Cal., Portland, Oreg., Tacoma and Seattle, Wash., only.

"It is further ordered that petitioners herein operating routes from eastern defined territories to points intermediate to Pacific coast terminals so situated as to necessitate the routing of traffic from lower rated through higher rated zones be, and they are hereby, authorized to establish via such routes rates authorized herein on the commodities named in the report and to disregard the long-and-short-haul rule of the fourth section to the extent necessary to permit such routing.

"And it is further ordered that tariffs containing rates revised in accordance with the terms of this order shall be made effective on statutory notice.

"By the commission.

"GEORGE B. MCGINTY,
Secretary."

"[SEAL.]

XXII.

San Jose, Santa Clara, Sacramento, and Stockton were not parties to the proceeding wherein the foregoing order was made, and no evidence was introduced in their behalf or introduced at all on the point as to whether or not the four cities mentioned were 22 entitled to be designated as terminals under said order the same as the points therein designated as terminals, but on the contrary said four cities named were arbitrarily designated as back-haul points. Petitioners further aver that there was no justification for charging a higher rate to the four cities mentioned than to the points mentioned in the aforesaid order as terminals, and that said four cities are surrounded by similar conditions and circumstances as are the terminals mentioned in the order. Petitioners therefore aver that the right to be designated as a California terminal and to receive westbound transcontinental freight at terminal rates was taken from them without evidence, without due process of law, and without right of representation; that petitioners have been denied the equal protection of the law, and that the unjustifiable increase of rates will cause them to suffer irreparable damage and injury.

XXIII.

In the decision of the Interstate Commerce Commission, decided January 29, 1915, 32 I. C. C. 611-658, being the decision upon which the aforesaid order of January 29, 1915, was based, a suggestion was made, voluntary on the part of the commission and not based upon any evidence introduced, as follows:

"We shall expect the carriers within sixty (60) days from date of service hereof to submit to the commission such plans for adjustment of rates to the back-haul points as they may desire; should the car-

riers submit no such plan within this time, the commission will undertake such investigation as to these rates as will enable it to enter a proper order with regard thereto."

23 Following said suggestion the rail carriers, on March 23, 1915, submitted their plan for the additional charge to back-haul territory, as follows:

"The lines leading to California terminals have submitted the following plan for making rates from eastern defined territory to such points:

"Deduct from terminal commodity rates 7 cents per 100 pounds, carloads, and 10 cents per 100 pounds, l. c. l., for basing rates, to which add full local rates from nearest terminal point to destination. This basis to prevail eastward from the terminal point until point is reached where the direct rate is the same or less. In no case shall rate to any back-haul point be less than to the terminal point."

Said matter came on for hearing before the Interstate Commerce Commission on the 12th day of April, 1915, at which time the carriers presented to the commission the above plan for the adjustment of rates to back-haul points which, by the decision of the commission, included San Jose, Santa Clara, Sacramento, and Stockton, and urged upon the commission the adoption of said plan. With the exception of San Francisco and the Railroad Commission of Nevada, no objection to said plan was offered and no other plan was submitted. The objection raised by the Railroad Commission of Nevada was that no higher rate should be charged to any intermountain or intermediate point than was charged to California terminals because of the long-and-short-haul clause in the fourth section of the act to regulate commerce; the objection on the part of San Francisco was that all points other than San Francisco should be charged the full local back. At said hearing neither the cities of San Jose, Santa

24 Clara, Sacramento, and Stockton, nor any of their commercial bodies or associations, were made parties, and no evidence was introduced on any plan other than the plan submitted by the rail carriers as aforesaid. Notwithstanding the same, the Interstate Commerce Commission, by its decision and order handed down on April 30, 1915, 34 I. C. C. 13-20, denied the adjustment proposed by the carriers and arbitrarily fixed the rate.

Said decision of April 30, 1915, is hereunto annexed and marked "Exhibit A," and is herein specially referred to and made a part hereof.

The order in said matter, dated April 30, 1915, is hereunto annexed and marked "Exhibit B," and is herein specially referred to and made a part hereof.

Petitioners submit that this action on the part of the commission is contrary to the views expressed in the opinion dated January 29, 1915, suggesting the submission of a plan by the rail carriers; and further aver that said decision and order, if allowed to stand, will be unjust and discriminatory against receivers and shippers of freight represented by petitioners and will cause them irreparable damage and injury; that said order, Exhibit B attached hereto,

unjustly affects petitioners herein and deprives them of rights without representation and takes from them property without due process of law, denying them the equal protection of the law.

XXIV.

Pursuant to the aforesaid order of the Interstate Commerce Commission of April 30, 1915, Exhibit B hereto attached, the rail carriers, respondents herein, have prepared and filed with the Interstate Commerce Commission tariff schedules Supplement 16, I. C. C. No. 996 of R. H. Countiss, effective July 15, 1915, wherein the four cities herein petitioning will be charged for westbound transcontinental freight coming over the rails of the respondent carriers herein, the

full terminal rate to San Francisco, with an additional charge
25 according to whether the commodity falls under A, B, or C.

If schedule A, the cities herein mentioned will be charged 7% 15%, and 25%, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard, in excess of the rate enjoyed by the terminals arbitrarily designated by the Interstate Commerce Commission. As to commodities under schedule B they will be charged an excess over the terminal rate of 15 cents, 25 cents, and 35 cents per 100 pounds on carloads, and 25 cents, 40 cents, and 55 cents per 100 pounds on less than carloads, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard, and on articles designated in schedule C they will be charged the terminal rate plus 75% of the local back haul. The local back haul is the maximum excess which can be charged to the petitioning cities, and certain maximums are designated in said order of April 30, 1915. The additional amounts, however, allowed by the commission to be charged on westbound transcontinental freight destined to the four cities herein, will in practically every instance amount to more than the full local back-haul charge, and therefore, under the orders of the commission, San Jose, Santa Clara, Sacramento, and Stockton will be compelled to pay in practically every instance, on commodities mentioned in schedules A and B, the full local back haul from San Francisco, and on commodities mentioned in schedule C, 75% of said back haul.

XXV.

In its findings and decision of January 29, 1915, the Interstate Commerce Commission held that the rail carriers could blanket their rates on west-bound transcontinental freight from the Atlantic seaboard to Missouri River points. Water competition on freight

shipped to the Pacific coast originates along the Atlantic sea-
26 board, and there is no water competition at Buffalo, Pittsburgh, or Chicago. If the rates are based upon water competition, the freight charges from the interior to the Pacific coast should be higher than from points on the Atlantic Ocean. The Interstate Commerce Commission, however, in regard to charging higher rates from interior points, stated as follows:

"That such policy would result also in serious injury to many of the industries located at interior points, which have, under equal rates, built up a large and profitable business on the Pacific coast. Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates would be the shippers on or near the Atlantic seaboard to whom would be given a monopoly of many articles in the markets of the Pacific coast. It is clear that the carriers' interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic coast."

Notwithstanding the foregoing, the Interstate Commerce Commission allowed the rail carriers to blanket their rates as afore-
 27 said from the Atlantic seaboard to the Missouri River in order not to give a monopoly to one point or section of country, to prevent discrimination against interior points, to prevent the disturbing of settled conditions, and to promote the general welfare of the public; yet, on the other hand, the commission arbitrarily ordered San Jose, Santa Clara, Sacramento, and Stockton to be stricken from the list of California terminals and directed the rail carriers to charge a higher rate for a shorter haul to said cities than will be charged to San Francisco and Oakland, thus unjustly discriminating against the four complaining cities, with the result of unsettling business conditions and causing irreparable damage and injury to the business interests of the four cities mentioned.

XXVI.

Petitioners herein aver that the orders authorizing the withdrawal of terminal rates from San Jose, Santa Clara, Sacramento and Stockton, and the rates on westbound transcontinental freight destined to said points, are contrary to law and equity, are discriminatory and unjust, were made without said cities having their day in court or without giving them an opportunity to show the unreasonableness thereof, that no justification for such increase was shown, and the order of April 30, 1915, was without evidence, that petitioners have been denied the equal protection of the law and deprived of property without due process of law, to their irreparable damage and injury. That unless the enforcement of said orders of the Interstate Commerce Commission and the increase on westbound transcontinental freight rates as to San Jose, Santa Clara, Sacramento, and Stockton be stayed by an order of the honorable judges
 28 of this court, great and irreparable injury and damage will result to these petitioners, their business enterprises and industries will be rendered profitless and of no value, and great

and irreparable financial loss incapable of ascertainment will be the result, to the manifest wrong and injury of your petitioners, and that said orders should be vacated and set aside.

Your petitioners therefore pray that upon the filing of this petition a temporary or interlocutory order be entered herein suspending the said orders of January 29, 1915, and April 30, 1915, of the said Interstate Commerce Commission, restraining the enforcement of said orders of the said commission, restraining the defendant railroad companies from charging or collecting the aforesaid increased rates on westbound transcontinental freight, and restraining the said commission and railroad companies named from taking any steps or instituting any proceedings to enforce the said orders or the withdrawal of said terminal rates, and that upon a final hearing of this cause a decree be entered herein setting aside and annulling the said orders of the said Interstate Commerce Commission and perpetually enjoining the enforcement of the said orders and perpetually enjoining the respondents and their agents, servants, and representatives and said railroad companies from enforcing the said orders and from taking any steps or instituting any proceedings for the enforcement of the said orders and from withdrawing terminal rates from San Jose, Santa Clara, Sacramento, and Stockton or increasing the same.

Your petitioners further pray that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, an order be entered suspending the said orders of the said Interstate Commerce Commission and enjoining the enforcement thereof and the withdrawal of terminal rates from San Jose, Santa Clara, Sacramento, and Stockton or the increasing of the same, until the hearing and final determination of the application for the temporary or interlocutory order as prayed for herein.

And your petitioners further pray that such other and further relief be granted in the premises as justice and equity may require.

Your petitioners further pray that your honors grant unto your petitioners a writ of subpoena of the United States of America, and that due service thereof be made upon the respondents and upon the Interstate Commerce Commission, commanding them at a certain day and under a certain penalty therein to be specified to appear before this court and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived), and to stand and abide such order and decree herein as to the court shall seem meet and agreeable to equity and good conscience.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
OF SACRAMENTO,
TRAFFIC BUREAU OF SAN JOSE CHAMBER OF COMMERCE,
STOCKTON TRAFFIC BUREAU, and
CITY OF SANTA CLARA,
By JOHN E. ALEXANDER,
Solicitor for Petitioners.

30 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn according to law, deposes and says: That he is the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, one of the petitioners in the above-entitled cause, and verifies the foregoing petition on behalf of all of said petitioners; and that he knows the facts stated in the above and foregoing petition, and that the statements therein are true.

G. J. BRADLEY.

Subscribed and sworn to before me this 9th day of July, A. D. 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

(Here follows Exhibits A and B attached to the petition, being Second Supplemental Report and Order, respectively, Fourth Section Applications Nos. 205, etc., decided April 30, 1915, 34 I. C. C. R. 13, which said exhibits will be found in another portion of the record.)

Endorsed: Filed July 10, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

31 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS TRAFFIC ASSOCIATION
of Sacramento, Traffic Bureau of San Jose Chamber
of Commerce, Stockton Traffic Bureau, and City of
Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
Commission, Atchison, Topeka & Santa Fe Railway
Company, Chicago, Rock Island & Pacific Railway
Company, Denver & Rio Grande Railroad Company,
Southern Pacific Company, Union Pacific Railroad
Company, and Western Pacific Railroad Company,
respondents.

No. 191,
in Equity.

Amendment to petition.

To the judges of the above court:

The Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, and Stockton Traffic Bureau, duly organized and existing associations of their respective cities as above mentioned, and the city of Santa Clara, a

municipal corporation and body politic of the State of California, bring this their amendment to their petition against the United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company and thereupon complain and say:

32

I.

The petition of petitioners herein filed on July 10, 1915, is in all respects affirmed, and petitioners bring this amendment to the petition as an addition to the aforesaid bill.

II.

The petition filed herein on July 10, 1915, is hereby amended by adding thereto the following paragraphs to be called paragraphs XXVa and XXVb, to be inserted between paragraphs XXV and XXVI of said bill and to read as follows:

XXVa.

Petitioners herein aver that neither they nor the cities of Sacramento, Stockton, San Jose, or Santa Clara, nor any of the commercial bodies of said cities, were parties to the proceedings before the Interstate Commerce Commission in Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352. That the final order in said hearings was made by the Interstate Commerce Commission on April 30, 1915. That petitioners herein, upon obtaining knowledge of said order, filed with the Interstate Commerce Commission their written petition in due and regular form, setting forth specifically the facts and figures showing the population and geographical situation of the cities of Sacramento, Stockton, San Jose, and Santa Clara, the location of said cities with regard to rail and water competition, that said cities had been extended terminal rates by reason of water competition which always has and still does exist, and that no changed conditions had arisen to justify an increase in rail rates to said cities for westbound transcontinental freight, that the order of the commission of April 30, 1915, was not pursuant to the directions of the commission in the decision of January 29, 1915, that said order was

33 not justified by substantial evidence and was unjust and discriminatory as against the four cities mentioned, and that said order, if allowed to stand, would cause irreparable damage and injury to said petitioners. In said petition to the Interstate Commerce Commission the petitioners herein asked for an opportunity to be heard and to show that the order of the Interstate Commerce Commission was unjust and discriminatory as against the receivers and shippers of freight in the four cities, to show the affect that such dis-

crimination would produce, and also to show that irreparable damage and injury would result to petitioners and to the merchants and jobbers of the four cities mentioned if the said order of the Interstate Commerce Commission were allowed to stand. Said petition filed with the commission as aforesaid was denied, and petitioners herein were refused an opportunity to be heard. Notice of the denial of said petition was not received at all by the petitioners from Stockton, San Jose, and Santa Clara and was not received at Sacramento until July 6, 1915. Petitioners herein aver that they were denied by the Interstate Commerce Commission an opportunity to be heard, that property was taken from them without due process of law contrary to the XIV amendment of the United States Constitution, that the rail rates to said cities for westbound transcontinental freight were increased without allowing petitioners herein an opportunity to be heard, and that the increase of such rail rates is contrary to the provisions of the act to regulate commerce.

XXV-b.

The rail carriers extended terminal rates to Sacramento, Stockton, San Jose, and Santa Clara because of water competition. Such terminal rates were extended to the four cities mentioned by tariffs filed by the rail carriers with the Interstate Commerce Commission both prior and subsequent to June 18, 1910. That subsequent to June 18, 1910, the rail carriers have, in addition to extending terminal

34 rates to the four cities mentioned, reduced rates on various westbound transcontinental commodities destined to the four cities, have taken various species of freight from the class list and placed them in the commodity list, and have given to the four cities mentioned lower rates than were theretofore enjoyed, and petitioners aver that subsequent to June 18, 1910, the rail carriers have reduced their freight charges to the four cities mentioned on westbound transcontinental commodities and that such reduction was because of water competition, which still does exist, and that there are no changed conditions to justify any increase in such freight rates or to justify the order of the Interstate Commerce Commission authorizing the rail carriers to increase their charges on such freight destined to the four cities mentioned. That the merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara come in active competition with those in the same line of business in San Francisco and Oakland and compete with them in intermediate territory and throughout the States of California and Nevada, in some instances throughout the entire western portion of the United States.

The differential in favor of the four cities mentioned as against San Francisco and Oakland, on freight shipped to points outside of any of the cities just mentioned, is in most instances less than the local haul from San Francisco or Oakland to the four complaining

cities and this differential decreases rapidly, so that on shipments at any distance from the four cities the merchants and jobbers of San Francisco and Oakland can land their goods at such points at the same rate from San Francisco and Oakland as is charged for the same shipment from Sacramento, Stockton, San Jose, or Santa Clara, as the case might be. The tariff filed by the rail carriers pursuant to the orders of the Interstate Commerce Commission aforesaid, under which the merchants and jobbers of Sacramento, Stockton,

San Jose, and Santa Clara must pay for the shipment to them
35 of westbound transcontinental freight a higher charge than do those in the same line of business in San Francisco and Oakland, places such a burden upon the merchants, manufacturers, and jobbers of the four complaining cities that they are and will be unable to compete with the merchants, manufacturers, and jobbers of San Francisco and Oakland; that the moneys invested in the various industries in the four cities mentioned will be lost; that the commercial importance and prosperity of the four cities will be ruined; that thousands of workers will be thrown out of employment; that petitioner herein will suffer irreparable damage and injury; that the merchants and jobbers of the four cities mentioned will not be able to sell to their former customers because of the competition with those in the same line of business in San Francisco and Oakland and that such customers will form new trade relations in San Francisco and Oakland; that the channels of trade will be changed; that no new industries will or can locate at Sacramento, Stockton, San Jose, or Santa Clara, because of the fact that they will be unable to compete with the industries of San Francisco and Oakland because of the lower freight rates to the last-mentioned points; that the industries now located at the four complaining cities will be forced out of business; that all old industries and new industries will be forced to locate at San Francisco and Oakland; and that the two cities last mentioned will have a monopoly of all business; that the great and prosperous industries that have located and flourished at Sacramento, Stockton, San Jose, and Santa Clara under equal rates will be destroyed and confiscated and the petitioners herein and the merchants, manufacturers, and jobbers of the four complaining cities will suffer great and irreparable injury.

The fourth section of the act to regulate commerce makes it unlawful for any common carrier to receive greater com-
36 pensation for transportation of property for shorter than for a longer haul over the same route or line in the same direction, the shorter haul being included in the longer. Westbound transcontinental freight destined to San Francisco and Oakland passing through certain gateways passes through Sacramento, Stockton, San Jose, and Santa Clara, according to the route over which such freight is transported. It is provided, however, that upon application to the commission a carrier may in special cases, after investigation, be authorized by the commission to charge less for

longer than for a shorter haul, and the commission may from time to time prescribe the extent to which the carrier may be relieved from the operation of this section.

The rail carriers in Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, before the Interstate Commerce Commission, did not ask to be relieved from the operation of the long and short haul clause of the fourth section in so far as rates to Sacramento, Stockton, San Jose, and Santa Clara were concerned, but petitioned to be allowed to charge the same rates. The commission in its orders of January 29, 1915, and April 30, 1915, in said hearings, arbitrarily eliminated these four cities from the enjoyment of terminal rates and designated them as "back-haul" points, a name which had never before been applied to them, and thereby arbitrarily fixed an adjustment of rates which will work irreparable damage to the merchants, manufacturers, and jobbers of these cities, an adjustment which was not justified by the evidence.

Your petitioners herein make the same prayer as in their bill filed herein on July 10, 1915, but answer under oath to this amendment to the petition is herein expressly waived.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
OF SACRAMENTO,

TRAFFIC BUREAU OF SAN JOSE CHAMBER OF COMMERCE,
STOCKTON TRAFFIC BUREAU AND CITY OF SANTA CLARA,

By JOHN E. ALEXANDER,
Solicitor for Petitioners.

37 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn according to law, deposes and says: That he is the traffic manager of the Merchants and Manufacturers' Traffic Association of Sacramento, one of the petitioners in the above-entitled cause, and verifies the foregoing amendment to the petition filed in the above matter on July 10, 1915, on behalf of all of said petitioners; that he knows the facts stated in the foregoing amendment to said petition filed herein, and that the statements in said amendments to said petition are true.

G. J. BRADLEY.

Subscribed and sworn to before me this 23rd day of July, 1915.

[SEAL.]

FLORA HALL,
*Notary Public in and for the City and County of
San Francisco, State of California.*

Endorsed: Filed July 23, 1915. W. B. Maling, clerk. By J. A. Schaertzer, deputy clerk.

38 In the United States District Court, Northern District of California. Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
of Sacramento, Traffic Bureau of San Jose Chamber
of Commerce, Stockton Traffic Bureau, and City of
Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
Commission, Atchison, Topeka & Santa Fe Railway
Company, Chicago, Rock Island & Pacific Railway
Company, Denver & Rio Grande Railroad Company,
Southern Pacific Company, Union Pacific Railroad
Company, and Western Pacific Railroad Company,
respondents.

No. 191,
in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

G. J. Bradley, S. E. Semple, and W. D. Wall, being each first duly sworn, depose and say: That they are respectively the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, California, the traffic Manager of the Chamber of Commerce of Stockton, California, and the manager of the Traffic Bureau of the San Jose Chamber of Commerce; that the duties of their respective offices require them to be, and they and each of them are, familiar with the matters herein stated and know that the statements herein are true.

The rail carriers extended terminal rates to the cities of
39 Sacramento, Stockton, San Jose, and Santa Clara, because
of water competition which always has and still does exist.
That said terminal rates have been extended to said cities in tariffs
filed up to and including Trans-Continental Freight Bureau West-
Bound Tariff No. 1-N and supplements thereto, effective prior to
July 15, 1915, and by various tariffs filed since June 18, 1910, have
extended terminal rates to said cities. The westbound freight trans-
ported by rail carriers is generally designated under two heads, viz,
classified freight and commodities, classified freight being divided
into various classes and taking a much higher rate than is charged
for the freight designated as commodities. The rail carriers have,
in the various tariffs for westbound transcontinental freight which
they have filed since June 18, 1910 (in which tariffs terminal rates
were extended to Sacramento, Stockton, San Jose, and Santa Clara),
taken various species of freight from the class list and designated
them in their tariffs or the western classification of freight, as com-
modities, thus giving to such articles a lower rate, and to said cities
the benefit of terminal rates on such commodities; also in various

tariffs filed since June 18, 1910, the rail carriers have reduced rates on various commodities to those cities, all of which said reductions of rates to said cities of Sacramento, Stockton, San Jose, and Santa Clara were made by the rail carriers because of competition with the water carriers for the transportation of freight to said cities.

The principal industries of Sacramento, Stockton, San Jose, and Santa Clara are those of manufacturing and jobbing, said cities being distributing centers. The amount of the yearly output of manufacturing and jobbing industries in the four mentioned cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, approximately \$40,000,000.00; in the city of Stockton, approximately 40 \$25,000,000.00; and in the cities of San Jose and Santa Clara, approximately \$20,000,000.00. The number of employees engaged

in said manufacturing and jobbing industries in said cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, approximately 15,000; in the city of Stockton, approximately 10,000; and in the cities of San Jose and Santa Clara, approximately 8,000. The yearly pay roll of said manufacturing and jobbing industries in said cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, \$10,000,000.00; in the city of Stockton, \$6,500,000.00; and in the cities of San Jose and Santa Clara, \$5,000,000.00.

The manufacturers and jobbers of Sacramento sell and distribute their goods over a broad scope of territory; to the north as far as Roseburg, Oregon, to the south to Bakersfield, California, to the east throughout the State of Nevada, and to the west in California to Martinez, Benicia, Santa Rosa, and up the coast to Eureka. Throughout all of the above territory the manufacturers and jobbers come into active competition with those in the same line of business in San Francisco and Oakland. In addition to the foregoing, certain manufacturers and jobbers of Sacramento sell and distribute their products throughout the western half of the United States. The rail rates from San Francisco to Sacramento are graded on a 24¢ per 100 pound scale, and the rail rates from San Francisco and Sacramento meet approximately at Martinez and Benicia. In going north from Sacramento the rail rates from San Francisco and Sacramento are the same at the California-Oregon boundary line, the differential in favor of Sacramento being on a 12¢ scale at Woodland, California, and gradually diminishing until the rates from the two points meet at or about the California-Oregon line. Going east-
 41 ward, Sacramento enjoys a differential based upon a 12¢ scale, on the main line of the Southern Pacific Company, but which diminishes across the State of Nevada. To Tonopah and Goldfield territories the rates are the same from San Francisco and Sacramento. Going south through the San Joaquin Valley the rates are the same from San Francisco to Sacramento to all points.

The manufacturers and jobbers of Stockton sell and distribute their goods over a broad scope of territory; to the north to the California-Oregon line, to the south to Bakersfield, California, to the east throughout the State of Nevada, and to the west to Martinez and Livermore. Throughout all of the above territory the manufacturers and jobbers come into active competition with those in the same line of business in San Francisco and Oakland. In addition to the foregoing, certain manufacturers and jobbers of Stockton sell and distribute their products throughout the western portion of the United States. The rail charges from San Francisco to Stockton are at present graded on a 10¢ per 100 pound scale, but an 18¢ per 100 pound scale has been authorized, and tariffs therefor have been filed, to become effective August 15, 1915. The rail rates between San Francisco and Stockton meet on the west at Tracey. On shipments to the north and east Stockton has a differential in her favor graded on a 5¢ per 100 pound scale, diminishing as the distance from Stockton increases. On the north the rates become equal at Weed, California, the differential diminishing as you go north; on the east the rates become equal at the California-Nevada line, the differential diminishing as you go east from Stockton; and on the south the rates meet at approximately Bakersfield, the differential likewise diminishing with distance.

The manufacturers and jobbers of San Jose and Santa Clara sell and distribute their goods as far north as South San Francisco and to the borders of Oakland on the two sides of San Francisco Bay, through the Niles Canyon and down the San Joaquin Valley, and down along the coast to San Luis Obispo.

42 Throughout all of the above territory the manufacturers and jobbers of San Jose and Santa Clara come into active competition with those in the same line of business in San Francisco and Oakland. This does not include certain manufacturers and jobbers of San Jose and Santa Clara who distribute their products throughout the entire West. The local charge from San Francisco to San Jose is graded on a 7¢ per 100 pound scale. The rate from San Jose to Sunnyvale, a station nine miles from San Jose on the road to San Francisco, and to all points further north on the same line, is the same. The San Francisco merchant can ship goods to Sunnyvale, nine miles from San Jose, as cheaply as the same goods can be shipped from San Jose to that point. A similar condition exists on the eastern side of the lower end of San Francisco Bay, where the merchants of San Jose and Santa Clara come in competition with those of Oakland. Going out through Niles Canyon, the rates from San Francisco, Oakland, and San Jose are approximately the same. Going south from San Jose the rates from San Jose to Santa Cruz and to Monterey are the same as from San Francisco. Going down the Salinas Valley the same rates are charged to Paso Robles from San Jose and Santa Clara as are charged from San Francisco.

Under the terminal rates which Sacramento, Stockton, San Jose, and Santa Clara have always received, their manufacturers and

jobbers have been able to compete within the territory aforesaid with the other cities enjoying terminal rates, but should said merchants and manufacturers be compelled to pay the local back from San Francisco, or 75% of such local, as the case might be, this additional charge for transportation would make it impossible for them to meet the competition from San Francisco and Oakland, with the

result that the amounts invested in the aforesaid industries in
 43 Sacramento, Stockton, San Jose, and Santa Clara would be a complete loss and the merchants and manufacturers of said cities would suffer irreparable damage and injury.

The Interstate Commerce Commission, in certain matters wherein neither Sacramento, Stockton, San Jose, nor Santa Clara nor any of the commercial organizations thereof were parties, said matters being designated as Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, entered its orders of January 29, 1915, and April 30, 1915, whereby the rail carriers were allowed to file tariffs taking the terminal rates from Sacramento, Stockton, San Jose, and Santa Clara, and increasing the charge on westbound transcontinental freight destined to said cities in varying amounts, according to the character of the commodity. That said orders directed the increase of freight rates to the four cities mentioned and took from them the terminal rates, which they have always heretofore enjoyed, without said cities or their commercial bodies having had an opportunity to be heard and without evidence to justify such increases in freight rates. Pursuant to the order of April 30, 1915, the rail carriers filed with the Interstate Commerce Commission their schedule of tariffs, Supplement 16 to Transcontinental Freight Bureau West-Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, effective in part on July 15, 1915, and in part on August 15, 1915, wherein the cities of Sacramento, Stockton, San Jose, and Santa Clara are charged for westbound transcontinental freight destined to said cities the full terminal rate to San Francisco, with an additional back-haul charge varying in amount as to the nature of the commodity. On commodities designated as class A the four cities mentioned will be charged 7%, 15%, and 25%, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard in excess of the rates enjoyed by San Francisco and Oakland on the same commodities shipped from the same points. On commodities designated as

44 class B the four cities mentioned will be charged an excess over the rate to San Francisco and Oakland of 15¢, 25¢, and 35¢ per 100 pounds on carloads, and 25¢, 40¢, and 55¢ per 100 pounds on less than carloads, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard. On commodities designated as class C the four cities mentioned will be charged the full terminal rate to San Francisco and in addition thereto 75% of the local back haul. The local back haul is the maximum additional charge which can be made against the said four cities, and certain maximums are designated in said order of April 30, 1915. The additional amounts,

however, allowed by the aforesaid orders of the Interstate Commerce Commission to be charged for the transportation of westbound transcontinental freight destined to Sacramento, Stockton, San Jose, and Santa Clara, and set forth in the before-mentioned tariff filed by the rail carriers, will in practically every instance amount to more than the full local back-haul charge, and therefore, under the aforesaid orders of the Interstate Commerce Commission, the manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara will be compelled to pay in practically every instance, on commodities set forth in classes A and B, the full local back-haul charge from San Francisco and on all commodities set forth in class C 75% of the back-haul charge.

The manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara come in direct competition with those of San Francisco and Oakland, and if the industries of the four first-named cities are compelled to pay the local back haul at the rates before mentioned, or 75% of the same, they will be burdened with an additional cost which will allow the manufacturers and jobbers of San Francisco and Oakland to place their goods in the territory in which they have heretofore mutually competed at a considerably lower
 45 cost than the manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara and allow them to sell their goods in such territory at prices which can not be met from said four cities. The result will be that the manufacturers and jobbers of said four cities will be forced to confine their business to mere local transactions, and the greater part of the money invested in such industries will be lost. Under the schedules filed by the rail carriers, pursuant to the orders of the Interstate Commerce Commission, the manufacturers and jobbers of San Francisco and Oakland can land their commodities at the door of the consumer in Sacramento, Stockton, San Jose, and Santa Clara at as low a cost as can the manufacturers and jobbers of those cities and within 25% of the local charge in other instances.

The prosperity and commercial importance of Sacramento, Stockton, San Jose, and Santa Clara depend upon their industries which have been fostered and built up under settled conditions and under terminal rates. The additional freight charges to those cities increase the expenses of merchants, manufacturers, and jobbers at those points so that they can not compete against San Francisco and Oakland, and their merchants, manufacturers, and jobbers will suffer irreparable damage and injury, their business will be destroyed, the capital invested in their enterprises will be confiscated, and the commercial importance of Sacramento, Stockton, San Jose, and Santa Clara will be forever lost. Under such conditions no new enterprises will locate at the four cities mentioned, but all industries will be forced to locate at either San Francisco or Oakland, thus giving those points an absolute monopoly. Such a condition is unjust and discriminatory against Sacramento, Stockton, San Jose, and Santa Clara and gives to San Francisco and Oakland an undue

and an unjust preference and advantage. The orders of the Interstate Commerce Commission, as said by the Supreme Court of the United States, should be designed to promote commerce and prosperity and not to destroy that which has always existed. The Interstate Commerce Commission, in order not to disturb settled conditions and in order to allow the merchants of Chicago, Buffalo, or Pittsburgh to compete with the merchants of New York for trade on the Pacific coast, and in order not to disturb settled conditions or to destroy prosperity and industries which have been built up under equal rates, authorized the rail carriers to blanket their rates on westbound transcontinental freight from the Atlantic seaboard to Missouri River points, thus giving all cities within that wide territory the same rates to the Pacific coast. Such rates were not authorized because of water competition, for there is no water competition at Chicago, but for the best interests of the general public. Depriving Sacramento, Stockton, San Jose, and Santa Clara of terminal rates upsets settled conditions, destroys prosperous industries which have grown up and flourished under equal rates, and gives to San Francisco and Oakland a monopoly which is confiscatory of the industries of those four cities.

The merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara have built up and established settled trade relations under settled conditions and equal rates. Compelling the merchants and jobbers of those four cities to pay higher freight rates than are charged for like commodities delivered in San Francisco and Oakland will upset and is upsetting the settled trade conditions now existing between the merchants and jobbers of the four complaining cities and their customers, will divert and is diverting the course of trade into new channels and will cause new trade relations to be established between such consumers and the merchants and jobbers of San Francisco and Oakland, to the irreparable injury and damage of the merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara. The loss of trade and the establishment of new trade relationships will cause incalculable financial loss to the merchants and jobbers of the four cities mentioned, and such loss will grow greater the longer the said orders of the Interstate Commerce Commission and the tariffs filed thereunder are allowed to remain effective. Trade and prestige, when once lost, can never be fully recovered.

The petitioners in the above matter were not parties to the hearings before the Interstate Commerce Commission in the fourth section applications before mentioned. The tariff above mentioned was filed by the rail carriers pursuant to the order of the Interstate Commerce Commission of April 30, 1915. When petitioners herein received unofficial advice of said order, they filed their written petition with the Interstate Commerce Commission asking for rehearing in said matter in order that the petitioners herein might have the opportunity to show the effect of the discrimination that

would be produced by the adjustment of freight charges fixed in the order of the commission, and also to show that the business interests of said four cities would suffer irreparable injury if the carriers were allowed to establish and maintain the adjustment of rates set forth in said order. The said petition of petitioners herein was denied by the Interstate Commerce Commission and notice of the denial of said petition was received at Sacramento on July 6, 1915. Petitioners herein have been denied a hearing by the Interstate Commerce Commission, have been denied their day in court, have been divested of property without due process of law, and the order allowing the increase in rates on westbound transcontinental commodities destined to Sacramento, Stockton, San Jose, and Santa Clara was made without substantial evidence to justify the same.

48 The tariff filed by the rail carriers pursuant to the order of the Interstate Commerce Commission of April 30, 1915, Supplement 16 before described, is effective July 15, 1915, as to Class C commodities, and August 15, 1915, as to Class A and B commodities. Unless the enforcement of said order and the tariff filed pursuant thereto be restrained, and said order and tariff be set aside, the petitioners in the above cause and the merchants, manufacturers, and jobbers whom they represent, will suffer irreparable damage and injury. The merchants, manufacturers, and jobbers of Sacramento, Stockton, San Jose, and Santa Clara, in carrying on their various industries, must outline their plans and order various commodities a long time in advance of their actual delivery. Any change in rates, even though temporary, will upset their entire scheme of business, will cause a change in trade relations, change the channels of commerce, and divert trade to other routes, and add an additional cost to the expense of production, all of which will make it impossible for them to compete with those engaged in like lines of business in San Francisco and Oakland, and will cause them irreparable damage and injury.

The fourth section of the act to regulate commerce makes it unlawful for any common carrier to receive greater compensation for transportation of property for shorter than for a longer distance over the same route or line in the same direction. It is provided, however, that upon application to the commission a carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for a shorter distance, and the commission may from time to time prescribe the extent to which the carrier may be relieved from the operation of this section.

The carriers in applications No. 205, etc., did not ask to be relieved from the operation of the long and short haul clause
49 of the fourth section, in so far as rates to Sacramento, Stockton, San Jose, and Santa Clara were concerned, but asked that they be allowed to charge the same rates.

The commission, in their order, arbitrarily eliminated these cities from the enjoyment of terminal rates and designated them as "back-haul" points, a name which never before had been applied to them,

thereby arbitrarily fixing an adjustment which will work irreparable injury upon these cities, and an adjustment which is not justified by the evidence, as it has been shown in numerous cases before the commission that actual as well as potential water competition exists at these cities. The carriers themselves recognized this competition, else they would not have asked for this adjustment.

Having been refused by the commission the privilege of retaining terminal rates at these cities, the carriers then, after having been given two options by the commission as to the method of making rates to these cities, submitted such an adjustment as would not disrupt business conditions at those points, and at the same time would retain to their rails a fair share of the water competitive business.

The commission, in the face of this showing, arbitrarily rejected the option submitted by the carriers and authorized a bases of rates to these cities which entirely ignores the water competition from the ports and places these cities in the same category as points hundreds of miles back from the influence of this competition.

The last paragraph of fourth section further states that—

“Whenever a carrier by railroad shall, in competition with a water route or routes, reduce the rates to or from competitive points, it shall not be permitted to increase such rates unless
50 hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.”

Our contention is that the commission, by its order, has ordered the carriers to do exactly what is prohibited by the act. It has nowhere been shown, nor has any effort been made to show, that water competition between San Francisco and these cities has been eliminated or abated. While it is true that the ocean carriers operating through the Panama Canal from the Atlantic seaboard do not at the present time absorb the local rate between San Francisco and Sacramento, Stockton, San Jose, and Santa Clara, it is a fact that upon the opening of the canal their rates from the Atlantic seaboard were reduced to such an extent that the unit of cost to the receiver at the four cities mentioned is less on all commodities than prevailed during the period of absorption. The effect, therefore, of the commission's order will be to very materially increase the unit of the cost at these cities on all commodities received by rail, notwithstanding the fact that the water competition does now exist with full force and to the same extent as heretofore.

The decision of the Interstate Commerce Commission of January 29, 1915, granted the rail carriers the privilege of blanketing their westbound transcontinental freight rates from the Atlantic seaboard to Missouri River, thus directing them to charge the same rates for freight destined to the Pacific coast from all points between the Missouri River and the Atlantic seaboard. Thus the rate on a certain commodity from the Missouri River to San Francisco will be

the same as the rate on the same commodity from New York to San Francisco, although the haul from the latter point exceeds the former by more than a thousand miles. The reasons given for such authority, as stated in the findings of the Interstate Commerce Commission in the aforesaid fourth section applications, handed down January 29, 1915, was that higher rates from interior points would be contrary to the interests of the public. The commission, in regard to charging higher rates from interior points, stated as follows:

“That such policy would result also in serious injury to many of the industries located at interior points which have, under equal rates, built up a large and profitable business on the Pacific coast. Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates would be the shippers on or near the Atlantic seaboard to whom would be given a monopoly of many articles in the markets of the Pacific coast. It is clear that the carriers’ interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic coast.”

Notwithstanding the foregoing finding, the Interstate Commerce Commission arbitrarily eliminated Sacramento, Stockton, San Jose, and Santa Clara from the list of California terminals and directed the rail carriers to charge a higher rate for a shorter haul to said cities than under the said orders of the commission and the tariff filed thereto will be charged to San Francisco and Oakland.

52 The situation with regard to industries which have located at Sacramento, Stockton, San Jose, and Santa Clara is the same as that outlined in the above-mentioned findings of the commission, and the rate adjustment ordered by the commission will have the same disastrous effect upon the business interests of the four cities mentioned as would result to interior eastern points should they be charged higher rates. The above-mentioned orders of the commission unjustly discriminate against the business interests of Sacramento, Stockton, San Jose, and Santa Clara, with the result of unsettling business conditions and causing irreparable damage and injury.

Therefore petitioners pray the judges of this honorable court for an interlocutory order suspending the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariffs filed pursuant thereto in so far as they allow or charge for the transportation of transcontinental westbound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater

amount than is charged for the carriage of like freight to San Francisco and Oakland.

G. J. BRADLEY,
S. E. SEMPLE,
W. D. WALL.

Subscribed and sworn to before me this 22d day of July, 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and
County of San Francisco, State of California.*

Endorsed: Filed July 23, 1915. W. B. Maling, Clerk, by J. A. Schaertzer, deputy clerk.

53 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC
Association of Sacramento, Traffic Bureau of
San Jose Chamber of Commerce, Stockton
Traffic Bureau, and City of Santa Clara,
petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COM-
merce Commission, Atchison, Topeka & Santa
Fe Railway Company, Chicago, Rock Island
& Pacific Railway Company, Denver & Rio
Grande Railroad Company, Southern Pacific
Company, Union Pacific Railroad Company,
and Western Pacific Railroad Company, re-
spondents.

No. 191, in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn, deposes and says: That he is the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned and that he knows the statements herein contained are true.

That Sacramento is situated on the navigable waters of the Sacramento River and that ocean-going vessels have docked within the limits of said city. That the Sacramento River is navigable for vessels of deep draught during the greater portion of the year, and that four steamer lines run regularly throughout the year between

San Francisco and Sacramento, carrying freight of all descriptions, a large portion of which originates in eastern defined territory. That Sacramento has a population of over 60,000 and is located on the main lines of the Southern Pacific Company and Western Pacific Company, both transcontinental carriers, and is also reached by joint rates and through routes via the Atchi-

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son, Topeka & Santa Fe Railway in connection with the Central California Traction Company via Stockton, California, and the Oakland, Antioch & Eastern Railway via Bay Point, California. That prior to the advent of railroads in California freight from eastern territory was brought by sea-going vessels and landed at the door of Sacramento by an all-water route. That the amount and importance of these freight shipments by water are so great that the rail carriers, after the building of the transcontinental lines, were forced to extend terminal rates to Sacramento. That this water competition always has existed and still does exist, and no changed conditions have arisen which would justify the increase of freight charges to Sacramento on transcontinental westbound commodities, and the orders of the Interstate Commerce Commission directing such increase are against the direct inhibition of the provisions of the fourth section of the act to regulate commerce.

Transcontinental westbound freight destined to San Francisco by way of certain gateways pass through said city of Sacramento, and to charge a greater rate to Sacramento than is charged to San Francisco, the Sacramento haul being the shorter and included in the longer, is contrary to the provisions of the fourth section of the act to regulate commerce.

By reason of the fact that terminal rates were extended to Sacramento and that she was entitled to the same, many industries of great importance have been located at said city and their welfare is dependent upon the retention of such rates. The merchants
55 of Sacramento come in active competition with the merchants throughout the State of California, especially with those of Oakland and San Francisco, and any increase in freight charges to Sacramento would add such an expense that they could not meet the competition of other points, especially Oakland and San Francisco, and the result would be absolute ruin to the business enterprises of California's capital.

The amount of transcontinental westbound freight received yearly at Sacramento, brought there by the rail carriers, is in excess of 200,000 tons. The local rate from San Francisco to Sacramento is graded on a 24¢ per 100-pound scale. Therefore, the increase in freight charges to Sacramento on the present transcontinental westbound freight brought to that city would amount to between \$750,000.00 and \$1,000,000.00. That if the merchants and manufacturers of Sacramento are compelled to pay that amount in excess of their present charges they will be unable to meet the competition from San Francisco and Oakland, and their present business, which is that of manufacturing and wholesale distributing, will be absolutely ruined and the prosperity and commercial importance of that city will be doomed to destruction unless the aforesaid orders of January 29, 1915, and April 30, 1915, of the Interstate Commerce Commission and the tariff filed pursuant thereto by the rail carriers are set aside.

That the city of Sacramento is entitled to terminal rates by reason of water competition, which is the same circumstance and condition

which entitles San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to Sacramento than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to Sacramento and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the city of Sacramento will suffer irreparable damage and injury.

Annexed hereto, marked Exhibits A and B, and to which reference is specially made, are schedules showing the amounts that the jobbers of Sacramento will have to pay over and above those paid by San Francisco jobbers on various commodities shipped to and sold in competitive territory under the tariff Supplement No. 16 to Trans-Continental Freight Bureau West-Bound Tariff No. 1-N, I. C. C., No. 996 of R. H. Countiss, filed with the Interstate Commerce Commission by the rail carriers pursuant to the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, set forth in the petition filed herein. Reference to said tariff is hereby specially made, and the same is made a part hereof by reference.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

G. J. BRADLEY.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County
of San Francisco, State of California.*

EXHIBIT A.

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities from Eastern defined territories to representative points of destination.

DISTRIBUTIVE COST.

To—	Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
CANNED GOODS FROM GROUP A.					
Old rates, item 1088-A:					
Sacramento.....	95	155	111	262	4th class.
San Fran.....	95	161	104	262	
Diff. in favor Sac.....		6			
" " " San Fran.....			7		
New rates, Item 1088-B:					
Sacramento.....	85	145	101	252	119
San Fran.....	75	141	84	242	109
Diff. in favor San Fran.....	10	4	17	10	10
Sacramento net diff. loss.....		10	10	10	10

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
LAWN MOWERS FROM GROUP B.						
Old rates, item 544:						
Sacramento.....	125	207	145	338	171	2nd class.
San Fran.....	125	214	137	358	171	
Diff. in favor Sac.....		7				
" " " " San Fran.....			8			
New rates, item 1142:						
Sacramento.....	107	180	127	320	153	
San Fran.....	95	184	107	308	141	
Diff. in favor San Fran.....	12	5	20	12	12	
Sacramento net diff. loss.....		12	12	12	12	
TRACK & RAIL, DOOR, FROM GROUP B.						
Old rates, item 1150:						
Sacramento.....	85	152	103	277	123	3rd class.
San Fran.....	85	159	95	277	123	
Diff. in favor Sac.....		7				
Diff. in favor San Fran.....			8			
New rates, item 1150-A:						
Sacramento.....	95	162	113	287	133	
San Fran.....	85	159	95	277	123	
Diff. in favor San Fran.....	10	3	18	10	10	
Sacramento net diff. loss.....		10	10	10	10	
58 IRON FROM GROUP B.						
Old rates, item 1172:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, item 1172-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
BAR IRON FROM GROUP B.						
Old rates, item 1178:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, item 1178-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
BOLTS & NUTS FROM GROUP B.						
Old rates, item 1182:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, item 1182-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Sulsun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
NAILS & SPIKES FROM GROUP B.						
Old rates, Item 1198:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	85	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1198-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
50 PIPE, CAST, FROM GROUP B.						
Old rates, Item 1208:						
Sacramento.....	65	125	81	232	99	4th class.
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1208-A:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
PIPE, WROUGHT, FROM GROUP B.						
Old rates, Item 1210:						
Sacramento.....	65	125	81	232	99	4th class.
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1211:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
SHEET IRON FROM GROUP B.						
Old rates, Item 1216:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	83	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1217 & 1218-B:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
HORSESHOES FROM GROUP B.						
Old rates, Item 1222:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	85	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1222-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Framo.	Rate used from distrib- utive point
60 TUBING IRON FROM GROUP B.						
Old rates, Item 1232:						4th class.
Sacramento.....	65	125	81	232	99	
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Item 1232-A:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
LYE FROM GROUP A.						
Old rates, Item 1244:						4th class.
Sacramento.....	75	135	91	242	109	
San Fran.....	75	141	84	242	109	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Items 1244-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
OILS FROM GROUP D.						
Old rates, Item 1250:						3rd class.
Sacramento.....	90	157	108	282	128	
San Fran.....	90	164	100	282	128	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 1250-A:						
Sacramento.....	100	167	118	292	138	
San Fran.....	90	164	100	282	128	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
PAINT FROM GROUP A.						
Old rates, Item 1254:						4th class.
Sacramento.....	95	155	111	262	129	
San Fran.....	95	161	104	262	129	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Item 1254-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
61 PAPER FROM GROUP D.						
Old rates, Item 1264-B:						2nd class.
Sacramento.....	75	157	95	288	121	
San Fran.....	75	164	87	288	121	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 1264-C:						
Sacramento.....	85	167	105	298	131	
San Fran.....	75	164	87	288	121	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tombah & Goldfield.	Fresno.	Rate used from distributive point.
BUILDING PAPER FROM GROUP D.						
Old rates, Item 1266-A:						
Sacramento.....	75	142	93	267	113	3rd class.
San Fran.....	75	149	85	267	113	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1266-B:						
Sacramento.....	85	152	103	277	123	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
WRAPPING PAPER FROM GROUP D.						
Old rates, Item 1272:						
Sacramento.....	90	157	106	282	128	3rd class.
San Fran.....	90	164	100	282	128	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1273-A:						
Sacramento.....	50	157	106	282	128	
San Fran.....	50	154	90	272	118	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
SOAP FROM GROUP A.						
Old rates, Item 1302:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
Diff. " " San Fran.....			7			
New rates, Item 1302-A:						
Sacramento.....	90	150	106	257	124	
San Fran.....	80	146	89	247	114	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
62 SODA FROM GROUP A.						
Old rates, Item 1306:						
Sacramento.....	84	144	100	251	118	4th class.
San Fran.....	84	150	93	251	118	
Diff. in favor Sac.....		6				
Diff. " " San Fran.....			7			
New rates, Item 1306-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
STARCH FROM GROUP A.						
Old rates, Item 912:						
Sacramento.....	100	167	118	292	138	3rd class.
San Fran.....	100	174	110	292	138	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1313:						
Sacramento.....	95	162	113	287	133	
San Fran.....	85	159	95	277	123	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—	Weed.	Sulsun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.	
RADIATORS FROM GROUP B.						
Old rates, item 928-A:					3rd class.	
Sacramento.....	100	167	118	292		138
San Fran.....	100	174	110	292		138
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1313-1:						
Sacramento.....	85	152	103	277		123
San Fran.....	75	149	85	267		113
Diff. in favor San Fran.....	10	3	18	10		10
Sac. net diff. loss.....		10	10	10		10
WIRE, BARBED, FROM GROUP B.						
Old rates, item 1328:					4th class.	
Sacramento.....	85	145	101	252		119
San Fran.....	85	151	94	252		119
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, items 1328-A & 1198-A:						
Sacramento.....	85	145	101	252		119
San Fran.....	75	141	84	242		109
Diff. in favor San Fran.....	10	4	17	10		10
Sac. net diff. loss.....		10	10	10		10
63 WIRE FENCING FROM GROUP B.						
Old rates, item 1332:					3rd class.	
Sacramento.....	90	157	108	282		128
San Fran.....	90	164	100	282		128
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1332-A:						
Sacramento.....	85	152	103	277		123
San Fran.....	75	149	85	267		113
Diff. in favor San Fran.....	10	3	18	10		10
Sac. net diff. loss.....		10	10	10		10

Exhibit A.

Explanation: Commodities used represent in part schedule "C" of which there is a regular movement from eastern defined territory to Pacific coast.

Groups used represent territory of origin:

Group A—Atlantic seaboard.

" B—Pittsburg territory.

" C—Indiana & Ohio territory.

" D—Chicago territory.

Points of destination used are representative of San Francisco and Sacramento distributive territory in different directions, being located as follows:

Suisun, Cal., from San Francisco, 48 miles; from Sacramento, 40 miles.

Weed, Cal., from San Francisco, 323 miles; from Sacramento, 260 miles.

Tonapah, Nev., from San Francisco, 486 miles; from Sacramento, 397 miles.

Goldfield, Nev., from San Francisco, 517 miles; from Sacramento, 428 miles.

Fresno, Cal., from San Francisco, 194 miles; from Sacramento, 170 miles.

Tariff references.

Old rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996.

New rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996, supplement 16.

Classification used: Western Classification No. 53, I. C. C. 11.

Class rates: Southern Pacific Co. Local Tariff No. 711, I. C. C. 3543.

Class rates: Pacific Freight Tariff Bureau L. J. & P. Tariff 7-C, I. C. C. 215.

EXHIBIT B.

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, as shown in Exhibit A, to representative points of destination if tariffs on file become effective August 15, 1915.

DISTRIBUTIVE COST.

To—		Weed.	Suisun.	Tonopah & Goldfield.	Fresno.	Rate used from distributive point.
FLOWS FROM GROUP C.						
Old rates, Item 210:						
Sacramento.....	125	192	143	317	163	3rd class.
San Fran.....	125	199	135	317	163	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 210:						
Sacramento.....	138	205	156	330	176	
San Fran.....	125	199	135	317	163	
Diff. in favor San Fran.....	13	6	21	13	12	
Sac. not diff. loss.....		13	13	13	13	
IMPLEMENTS, HAND, FROM GROUP C.						
Old rates, Item 224-A:						
Sacramento.....	135	217	155	348	181	2nd class.
San Fran.....	135	224	147	348	181	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 224-A:						
Sacramento.....	163	235	173	366	199	
San Fran.....	135	224	147	348	181	
Diff. in favor San Fran.....	18	11	26	18	18	
Sac. not diff. loss.....		18	18	18	18	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
AMMUNITION FROM GROUP C.						
Old rates, item 226:						2nd class.
Sacramento.....	150	232	170	363	196	
San Fran.....	150	239	162	363	196	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 226:						
Sacramento.....	168	250	188	381	214	
San Fran.....	150	239	162	363	196	
Diff. in favor San Fran.....	18	11	26	18	18	
Sac. net diff. loss.....		18	18	18	18	
BAKING POWDER FROM GROUP A.						
Old rates, item 234:						3rd class.
Sacramento.....	120	187	138	312	158	
San Fran.....	120	194	130	312	158	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 234:						
Sacramento.....	136	203	154	328	174	
San Fran.....	120	194	130	312	158	
Diff. in favor San Fran.....	16	9	24	16	16	
Sac. net diff. loss.....		16	16	16	16	
BICYCLES FROM GROUP A.						
Old rates, item 244:						1st class.
Sacramento.....	250	394	284½	610	329½	
San Fran.....	250	407½	271	610	329½	
Diff. in favor Sac.....		13½				
" " " San Fran.....			13½			
New rates, item 244:						
Sacramento.....	274	418	308½	634	353½	
San Fran.....	250	407½	271	610	329½	
Diff. in favor San Fran.....	24	10½	37½	24	24	
Sac. net diff. loss.....		24	24	24	24	
BOTTLES FROM GROUP C.						
Old rates, item 263:						3rd class.
Sacramento.....	75	142	93	267	113	
San Fran.....	75	149	85	267	113	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 263:						
Sacramento.....	86	153	104	278	124	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	11	4	19	11	11	
Sac. net diff. loss.....		11	11	11	11	
CARPET FROM GROUP A.						
Old rates, item 292:						1st class.
Sacramento.....	185	281	208	425	238	
San Fran.....	185	290	199	425	238	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 292:						
Sacramento.....	209	305	232	449	262	
San Fran.....	185	290	199	425	238	
Diff. in favor San Fran.....	24	15	33	24	24	
Sac. net diff. loss.....		24	24	24	24	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
66 REFRIGERATORS FROM GROUP A.						
Old rates, item 366:						
Sacramento.....	135	217	155	348	181	2nd class.
San Fran.....	135	224	147	348	181	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 366:						
Sacramento.....	151	233	171	404	197	
San Fran.....	135	224	147	448	181	
Diff. in favor San Fran.....	16	9	24	16	16	
Sac. net diff. loss.....		16	16	16	16	
DRUGS FROM GROUP A.						
Old rates, item 378-A:						
Sacramento.....	150	246	173	390	203	1st class.
San Fran.....	150	255	164	390	203	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 378-A:						
Sacramento.....	174	270	197	414	227	
San Fran.....	150	255	164	390	203	
Diff. in favor San Fran.....	24	15	33	24	24	
Sac. net diff. loss.....		24	24	24	24	
EARTHENWARE FROM GROUP A.						
Old rates, item 400:						
Sacramento.....	115	197	135	328	161	2nd class.
San Fran.....	115	204	127	328	161	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 400:						
Sacramento.....	128	210	148	341	174	
San Fran.....	115	204	127	328	161	
Diff. in favor San Fran.....	13	6	21	13	13	
Sac. net diff. loss.....		13	13	13	13	
LUMBER FROM GROUP D.						
Old rates, item 650:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, item 650:						
Sacramento.....	86	146	102	233	120	
San Fran.....	80	146	89	247	114	
Diff. in favor San Fran.....	6		13	6	6	
Sac. net diff. loss.....		6	6	6	6	
67 MACHINERY FROM GROUP D.						
Old rates, item 660:						
Sacramento.....	150	232	170	363	196	2nd class.
San Fran.....	150	239	162	363	196	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 660:						
Sacramento.....	161	243	181	374	207	
San Fran.....	150	239	162	363	196	
Diff. in favor San Fran.....	11	4	19	11	11	
Sac. net diff. loss.....		11	11	11	11	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—	Weed.	Suisun.	Tono- pah & Gold- field.	Fremo.	Rate used from distribu- tive point.	
EARTHENWARE, PLUMBERS' GOODS FROM GROUP B.						
Old rates, item 784:					1st class.	
Sacramento.....	170	266	193	410		223
San Fran.....	170	275	184	410		223
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 784:						
Sacramento.....	188	284	211	428		241
San Fran.....	170	275	184	410		223
Diff. in favor San Fran.....	18	9	27	18		18
Sac. net diff. loss.....		18	18	18		18
BATHTUBS FROM GROUP B.						
Old rates, item 786:					1st class.	
Sacramento.....	180	276	203	420		233
San Fran.....	180	285	194	420		233
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 786:						
Sacramento.....	198	294	221	438		251
San Fran.....	180	285	194	420		233
Diff. in favor San Fran.....	18	9	27	18		18
Sac. net diff. loss.....		18	18	18		18
STAMPED WARE FROM GROUP B.						
Old rates, item 910-A:					2nd class.	
Sacramento.....	120	202	140	333		166
San Fran.....	120	209	132	333		166
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 910-A:						
Sacramento.....	128	210	148	341		174
San Fran.....	120	209	132	333		166
Diff. in favor San Fran.....	8	1	16	8		8
Sac. net diff. loss.....		8	8	8		8
68 GAS STOVES FROM GROUP C.						
Old rates, item 938-A:					3rd class.	
Sacramento.....	130	197	148	322		168
San Fran.....	130	204	140	322		168
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 938-A:						
Sacramento.....	143	210	161	335		181
San Fran.....	130	204	140	322		168
Diff. in favor San Fran.....	13	6	21	13		13
Sac. net diff. loss.....		13	13	13		13
WOODENWARE FROM GROUP D.						
Old rates, item 1060:					2nd class.	
Sacramento.....	150	232	170	363		196
San Fran.....	150	239	162	363		196
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1060:						
Sacramento.....	161	243	181	374		207
San Fran.....	150	239	168	363		196
Diff. in favor San Fran.....	11	4	13	11		11
Sac. net diff. loss.....		11	11	11		11

Exhibit B.

Explanation: Commodities used represent in part regular movement from eastern defined territory to Pacific coast.

Groups used represent territory of origin:

Group A—Atlantic seaboard.

" B—Pittsburgh territory.

" D—Chicago territory.

Points of destination used are representative of San Francisco and Sacramento distributive territory in different directions, being located as follows:

Suisun, Cal., from San Francisco, 48 miles; from Sacramento, 40 miles.

Weed, Cal., from San Francisco, 323 miles; from Sacramento, 260 miles.

Tonopah, Nev., from San Francisco, 486 miles; from Sacramento, 397 miles.

Goldfield, Nev., from San Francisco, 517 miles; from Sacramento, 488 miles.

Fresno, Cal., from San Francisco, 194 miles; from Sacramento, 170 miles.

Tariff references.

Old rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996.

New rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996, supplement 16.

Classification used: Western Classification No. 53, I. C. C. 11.

Class rates: Southern Pacific Co. Local Tariff No. 711, I. C. C. 3543.

Class rates: Pacific Freight Tariff Bureau J. L. & P. Tariff No. 7-C, I. C. C. 215.

Endorsed: Filed Jul. 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

69 In the United States District Court, Northern District of California, second division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

S. E. Semple, being first duly sworn, deposes and says: That he is the traffic manager of the Stockton Traffic Bureau, of Stockton, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned, and that he knows the statements herein contained are true.

Stockton is a city with a population of 42,000 and is a manufacturing and distributing center. Manufacturers, jobbers, and many industries have located in Stockton because of the fact that she has enjoyed and was entitled to terminal rates, and such industries have flourished and prospered under equal rates.

70 That the city of Stockton is located upon the San Joaquin River, which is a navigable waterway, and that two regular lines of steamers ply daily between said city of Stockton and the city of San Francisco, carrying freight of all kinds and character, a large portion of which originates in eastern defined territory. That the Government of the United States maintains a channel from the San Joaquin River to the heart of the city of Stockton to a depth at all times of 9½ feet, and from November to August to a depth of 14 feet.

The city of Stockton is on the main lines of the Southern Pacific Company, Western Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, and is on direct route of said rail carriers to the cities of Oakland and San Francisco. To allow the rail carriers to charge a greater rate on westbound trans-continental freight destined to Stockton than is charged for the same freight destined to San Francisco or Oakland, is to make a

greater charge for the shorter haul, the shorter haul being included in the longer haul, and is contrary to the provisions of the fourth section of the act to regulate commerce.

Stockton receives each year by rail over 130,000 tons of freight originating in eastern defined territory. The local rate from San Francisco to Stockton is graded on a 10¢ per 100 pound scale, but an 18¢ per 100 pound scale has been authorized and tariffs therefor have been filed, effective August 5, 1915. The increased freight charges on westbound transcontinental freight which the merchants of Stockton must pay under the orders of the Interstate Commerce Commission will, according to the back-haul rate charged, amount to more than \$150,000.00 or \$225,000.00 per year. This increased charge will make it impossible for the merchants, manufacturers, and jobbers of Stockton to meet the competition of those in the same line of business in San Francisco and Oakland, to their irreparable injury.

71 That the city of Stockton is entitled to terminal rates by reason of water competition, which is the same circumstance and condition which entitled San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to Stockton than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to Stockton and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the city of Stockton will suffer irreparable damage and injury.

Hereto attached, as "Exhibit A," is a schedule showing exactly the amounts which the jobbers of Stockton will have to pay over and above those paid by the San Francisco jobbers on specific articles sold in competitive territory. This schedule shows differences based on the present 8¢ per 100 lbs. back haul, whereas a rate of 18¢ per 100 lbs. has been authorized and the tariff therefor has been filed, to become effective August 5, 1915. This new rate will in each instance increase the difference by 10¢ per 100 lbs.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

S. E. SEMPLE.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

EXHIBIT A.

Exhibit showing comparative cost to jobbers at San Francisco and Stockton in delivering goods to points of consumption, using carload rate from eastern points of origin plus less rate to final destination.

RATES IN CENTS PER 100 POUNDS.

Item 1088B. Canned goods, from Group A points.

Carload to San Francisco.....	75	Carload to terminal point.....	75
		Arbitrary back.....	08
		Thru to Stockton.....	83
C. L. to San Francisco.....	75	C. L. to San Francisco.....	75
Less C. L. to Angels, Cal.....	36	Less c. l. to Cal.-Ore. line.....	67½
Thru.....	111	Thru.....	142½
C. L. to Stockton.....	83	C. L. to Stkn.....	83
Less C. L. to Angels.....	33	Less c. l. to Cal.-Ore line.....	66½
Thru.....	116	Thru.....	149½
San Francisco advantage.....	05	San Francisco advantage.....	07
Carload to San Francisco.....	75	Carload to San Francisco.....	75
Less C. L. to Brito, Cal.....	23	Less c. l. to Elko, Nev.....	77
Thru.....	98	Thru.....	152
C. L. to Stkn.....	83	C. L. to Stkn.....	83
Less C. L. to Brito.....	21	Less c. l. to Elko.....	76
Thru.....	104	Thru.....	150
San Francisco adv.....	06	San Francisco adv.....	07

73 Item 1150A. Rail and track, from Group C points.

To San Francisco, carload.....	85	To terminal point, carload.....	85
		Arbitrary back.....	08
		Through to Stockton.....	93
Carload to San Francisco.....	85	Carload to San Francisco.....	85
Less carload to Angels, Cal.....	39	Less carload to Cal.-Ore. line.....	75
Through.....	124	Through.....	100
Carload to Stockton.....	93	Carload to Stockton.....	93
Less carload to Angels.....	35	Less carload to Cal.-Ore. line.....	74
Through.....	128	Through.....	107
San Francisco advantage.....	04	San Francisco advantage.....	07
Carload to San Francisco.....	85	Carload to San Francisco.....	85
Less carload to Brito, Cal.....	27	Less carload to Elko, Nev.....	95
Through.....	112	Through.....	180
Carload to Stockton.....	93	Carload to Stockton.....	93
Less carload to Brito, Cal.....	23	Less carload to Elko.....	93
Through.....	116	Through.....	186
San Francisco advantage.....	04	San Francisco advantage.....	06

74 Item 1172A. Iron and steel articles, from Group B points.

To San Francisco, carload-----	75	To terminal point, carload-----	75
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	111	Through-----	142½
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Angels-----	38	Less carload to Cal.-Ore. line--)	68½
Through-----	116	Through-----	149½
San Francisco advantage-----	05	San Francisco advantage-----	07
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Brito-----	23	Less carload to Elko, Nev-----	77
Through-----	98	Through-----	152
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Brito-----	21	Less carload to Elko-----	76
Through-----	104	Through-----	159
San Francisco advantage-----	06	San Francisco advantage-----	07

The above figures also apply on practically all iron and steel articles.

75 Item 1254A. Paints, from Group A, B, C, D.

To San Francisco, carload-----	75	To terminal point-----	75
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	111	Through-----	142½
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Angels-----	38	Less carload to Cal.-Ore. line--	68½
Through-----	116	Through-----	149½
San Francisco advantage-----	05	San Francisco advantage-----	07
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Brito-----	23	Less carload to Elko-----	77
Through-----	98	Through-----	152
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Brito-----	21	Less carload to Elko-----	76
Through-----	104	Through-----	159
San Francisco advantage-----	06	San Francisco advantage-----	07

76 Item 1302A. Soap, from Group A, B, C, D.

To San Francisco, carload-----	80	To terminal point-----	80
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	80	Carload to San Francisco-----	80
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	116	Through-----	147½

Carload to Stockton.....	88	Carload to Stockton.....	88
Less carload to Angels.....	33	Less carload to Angels.....	66½
Through.....	121	Through.....	154½
San Francisco advantage.....	05	San Francisco advantage.....	07
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Brito.....	23	Less carload to Elko, Nev.....	77
Through.....	103	Through.....	157
Carload to Stockton.....	88	Carload to Stockton.....	88
Less carload to Brito.....	21	Less carload to Elko.....	76
Through.....	109	Through.....	164
San Francisco advantage.....	06	San Francisco advantage.....	07
77	<i>Item 1318A, tile, from Group B.</i>		
To San Francisco carload.....	80	To terminal point.....	80
		Arbitrary back.....	07
		Through to Stockton.....	87
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Angels.....	36	Less carload to Cal.-Ore. line.....	67½
Through.....	116	Through.....	147½
Carload to Stockton.....	87	Carload to Stockton.....	87
Less carload to Angels.....	33	Less carload to Angels.....	66½
Through.....	120	Through.....	153½
San Francisco advantage.....	04	San Francisco advantage.....	06
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Brito.....	23	Less carload to Elko.....	77
Through.....	103	Through.....	157
Carload to Stockton.....	87	Carload to Stockton.....	87
Less carload to Brito.....	21	Less carload to Elko.....	76
Through.....	108	Through.....	163
San Francisco advantage.....	05	San Francisco advantage.....	06
78	<i>Items 202-204-206-208-210, agricultural implements, from Group A, B, C.</i>		
To San Francisco C. L.....	125	To San Francisco C. L.....	125
Less C. L. to Angels.....	39	Less C. L. to Cal.-Ore. line.....	75
Thru.....	164	Through.....	200
To Stockton C. L.....	136	To Stkn. C. L.....	136
Less C. L. to Angels.....	35	Less C. L. to Cal.-Ore. line.....	74
Thru.....	171	Thru.....	210
S. F. adv.....	07	S. F. adv.....	10
To San Francisco C. L.....	125	To San Francisco C. L.....	125
Less C. L. to Brito.....	27	Less C. L. to Elko, Nev.....	95
Thru.....	152	Thru.....	220
To Stkn. C. L.....	136	To Stkn. C. L.....	136
Less C. L. to Brito.....	23	Less C. L. to Elko.....	93
Thru.....	159	Thru.....	229
S. F. adv.....	07	S. F. adv.....	09

Tariff authority.

Westbound Transcontinental Freight Bureau Tf., in Countiss' I. C. C., 996.

Southern Pacific LF. & P. Tf. 102B, I. C. C., 3432.

Southern Pacific LF. Tf. 711, I. C. C., 3543.

Pacific Frt. Tf. Bureau, 2f-24C, I. C. C., 184.

Westn. Class 53, I. C. C., 11.

(Endorsed): Filed July 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

79 In the United States District Court, Northern District of California. Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

W. D. Wall, being first duly sworn, deposes and says: That he is the manager of the traffic bureau of San Jose Chamber of Commerce, of San Jose, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned, and that he knows the statements herein contained are true. That San Jose and Santa Clara are adjoining cities, and for the purpose of freight charges are considered as one.

That long prior to the advent of railroads in California or of the building of railroads across the continent, freight from the Atlantic seaboard was brought by the water carriers and landed at

80 Alviso, and thence hauled by dray direct to the door of the consumer in San Jose and in Santa Clara. That ever since 1852 water carriers have regularly plied to Alviso and discharged at that point freight originating in the eastern defined territory; that various steamer lines during all the time aforesaid have had regular runs from Alviso to San Francisco, at times as many as seven boats being regularly employed. The city limits of San Jose extend to Alviso and to deep water on San Francisco Bay, at which point the Army engineers of the United States have recommended extensive improvements to facilitate further deep water shipping; the State

of California has also appointed the harbor commission of the port of San Jose, which commission has been appointed and is fulfilling the duties of its office. The commercial center of San Jose is about six miles from Alviso, and the commercial center of Santa Clara is about four miles only from Alviso. Freight destined to San Jose and Santa Clara is landed at Alviso by the water carrier, and thence hauled at the expense of the water carrier direct to the door of the consumer in San Jose or in Santa Clara. Thus the wholesaler in either of the two cities mentioned is saved the expense of the haul from the freight sheds of the rail carrier either to his own warehouse or to the consumer to whom the goods have been sold.

By reason of the aforesaid water competition the rail carriers extended terminal rates to San Jose and Santa Clara, and said water competition always has and still does exist. Affiant further avers that there has been no elimination of water competition, and that no changed conditions of any kind have arisen which would justify the rail carriers in increasing rates on westbound transcontinental freight destined either to San Jose or to Santa Clara. That an increase of such rates would be contrary to the express provisions of

the fourth section of the act to regulate commerce, and that the action of the Interstate Commerce Commission in directing rail carriers to charge for westbound transcontinental freight destined to San Jose and Santa Clara the full rate to San Francisco, plus 75% of the local back haul on certain commodities and the full local on others, is unjust and discriminatory as to said cities and against the inhibition of the provisions of the fourth section of the act to regulate commerce.

San Jose and Santa Clara are on the main line of the Southern Pacific Company running to San Francisco and Oakland, and freight destined to said last-named cities, going through certain designated gateways, will pass through San Jose and Santa Clara en route to San Francisco and Oakland, and that the order of the Interstate Commerce Commission of April 30, 1915, allows the rail carriers to charge a higher rate for a shorter haul, the shorter haul being included in the longer, contrary to the provisions of the fourth section of the act to regulate commerce.

San Jose and Santa Clara are manufacturing and distributing centers, and by reason of the fact that said cities have enjoyed terminal rates many industries and factories have been established at said points, and the growth and prosperity of said communities are dependent upon the fact that they have been designated as California terminals; that said cities come in active competition with San Francisco and Oakland, and that an increase in freight rates would add a burden to the operating expenses of the merchants and manufacturers of San Jose and Santa Clara which would prevent them from successfully meeting the competition in San Francisco and Oakland.

That the local rate from San Francisco to San Jose and Santa Clara is graded on a 7¢ per 110-pound scale. That San Jose and

82 Santa Clara receive each year over 90,000 tons of transcontinental freight brought in by the rail carriers. Increasing such freight charges to the extent of three-fourths of the local back haul from San Francisco on certain commodities and the full local on others would add a yearly burden to the mercantile bodies of San Jose and Santa Clara of something over \$100,000.00. That this increased burden would prevent the merchants of the two cities mentioned from successfully competing with San Francisco, would change the general character of business in said two cities from that of general manufacturing and wholesale to mere local transactions, would cause the destruction of the wholesale and manufacturing industries in said two cities, and would cause the merchants therein to suffer irreparable damage and injury.

That the cities of San Jose and Santa Clara are entitled to terminal rates by reason of water competition, which is the same circumstance and condition which entitles San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to San Jose and Santa Clara than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to San Jose and Santa Clara and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the cities of San Jose and Santa Clara will suffer irreparable damage and injury.

83 Annexed hereto, marked Exhibits A and B, and to which reference is specially made, are schedules showing the amounts that the jobbers of San Jose and Santa Clara will have to pay over and above those paid by San Francisco jobbers on various commodities shipped to and sold in competitive territory under the tariff, supplement No. 16 to Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. No. 996, of R. H. Countiss, filed with the Interstate Commerce Commission by the rail carriers pursuant to the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, set forth in the petition filed herein. Reference to said tariff is hereby specially made and the same is made a part hereof by reference.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

W. D. WALL.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

EXHIBIT A.

Statement of rates effective July 15, 1915, in supplement No. 16 to Transcontinental Freight Bureau Westbound Tariff 1-N, Interstate Commerce Commission No. 996, of R. H. Countiss, agt., showing transcontinental carload commodity rates to San Francisco, Cal., and San Jose, Cal., together with total freight rates when distributed in less-than-carload lots through those points to various destinations shown.

Item No.	From group—	C/L commodity rate in cents per 100 lbs.		Distributed to—							
				Hayward, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		San Luis Obispo, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		Fresno, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.			
		To S. F.	To S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.		
1088-B.....	A	75	79	81	85	110	114	100	113		
1082-A.....	B	85	89	91	95	127	131	123	127		
1172-A.....	B	75	79	81	85	112	116	100	113		
1178-A.....	B	75	79	81	85	112	116	100	113		
1182-A.....	B	75	79	81	85	112	116	100	113		
1196-A.....	B	75	79	81	85	112	116	100	113		
1200-A.....	B	65	69	71	75	102	106	90	103		
1211.....	B	65	69	71	75	102	106	90	103		
1217.....	B	75	79	81	85	112	116	100	113		
1222-A.....	B	75	79	81	85	112	116	100	113		
1244-A.....	A	75	79	81	85	112	116	100	113		
1272-A.....	D	80	84	86	90	128	132	126	130		
1302-A.....	A	80	84	86	90	117	121	114	118		
1306-A.....	A	75	79	81	85	112	116	100	113		
1318-I.....	A	75	79	81	85	117	121	113	117		
1328-A.....	A	75	79	81	85	112	116	100	113		
1332-A.....	A	75	79	81	85	117	121	113	117		
1336-A.....	A	75	79	81	85	112	116	100	113		

NOTE.—In figuring the less-than-carload distributive rate from San Francisco and San Jose on shipments moving into those points in mixed carloads, we have used the rate under which the majority of such goods will be distributed.

On the following items enumerated in tariff above shown, covering movement into San Francisco under mixed carload rates, no provision is made under class arbitrary to be used for application of carload rate on such shipments when destined San Jose, necessitating either the application of the intermediate rate or the less-than-carload rate from San Francisco to San Jose on a large number of the commodities included in the car: Items 1142-A, 1250-A, 1254-A, 1257, 1264-C, 1266-B.

Arbitraries used, San Francisco to San Jose: As carried in supplement 16 to Transcontinental Freight Bureau Tariff 1-N, I. C. C. 966, of R. H. Countiss, agent. Also Southern Pacific Co. Local Freight Tariff 711, I. C. C. 3543.

Less-than-carload distributive rates used: Southern Pacific Company Local Freight Tariff No. 711, I. C. C. 3543.

EXHIBIT B.

Statement of rates effective August 15, 1915, in Transcontinental Freight Bureau Westbound Tariff 1-N and as supplemented, Interstate Commerce Commission No. 996, of R. H. Countias, agt., showing transcontinental carload commodity rates to San Francisco, Cal., and San Jose, Cal., together with total freight rates when distributed in less-than-carload lots through those points to various destinations shown.

Item No.	From group—	C/L commodity rate in cents per 100 lbs.		Distributed to—					
				Hayward, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		San Luis Obispo, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		Fresno, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.	
		To S. F.	To S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.
210.....	D	125	130	131	136	167½	172½	163	168
224-A.....	D	135	141	141	147	183½	189½	181	187
234.....	A	120	126	126	132	162½	168½	158	164
244.....	A	250	257	260½	267½	340	347	329½	336½
263.....	A	75	80	81	86	117½	122½	113	118
266.....	A	135	141	141	147	183½	189½	181	187
400.....	A	115	120	121	126	152½	157½	149	154
513.....	A	90	95	96	101	127½	132½	124	129
786.....	A	180	186	187	193	240	246	233	239
910.....	A	120	126	126	132	168½	174½	166	172
938-A.....	A	130	135	137	142	190	195	183	188
1060.....	A	130	136	136	142	190½	204½	196	202

NOTE.—In figuring the less-than-carload distributive rate from San Francisco and San Jose on shipments moving into those points in mixed carloads, we have used the rate under which the majority of such goods will be distributed.

On the following items enumerated in tariff above shown, covering movement into San Francisco under mixed carload rates, no provision is made under class arbitrary to be used for application of carload rate on such shipments when destined San Jose, necessitating either the application of the intermediate rate or the less-than-carload rate from San Francisco to San Jose on a large number of the commodities included in the car: Item 292, item 378, and item 660.

Arbitrary used, San Francisco to San Jose: Rates carried in Southern Pacific Company Local Freight Tariff 711, I. C. C. No. 3543.

Less-than-carload distributive rates used: Rates carried in Southern Pacific Company Local Freight Tariff 711, I. C. C. 3543.

(Endorsed): Filed Jul. 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

86 United States of America. District Court of the United States, Northern District of California, second division. In equity.

The President of the United States of America, greeting:

To United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad

Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company—

You are hereby commanded that you be and appear in said district court of the United States, second division, aforesaid, at the court room in San Francisco, twenty days from the date hereof, to answer a bill of complaint exhibited against you in said court by Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, and to do and receive what the said court shall have considered in that behalf.

Witness the honorable William C. Van Fleet, judge of said district court, this 10th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our independence the 140th.

[SEAL.]

WALTER B. MALING,
Clerk.

By J. A. SCHAEVERTZ,
Deputy Clerk.

Memorandum pursuant to rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to file your answer or other defense in the above suit on or before the twentieth day after service, excluding the day thereof, of this subpoena at the clerk's office of said court, pursuant to said bill, otherwise the said bill may be taken pro confesso.

WALTER B. MALING,
Clerk.

By J. A. SCHAEVERTZ,
Deputy Clerk.

(Indorsed :) No. 191, equity. U. S. District Court, Northern District of California, second division. In equity. Merchants' and Manufacturers' Traffic Assn. of Sacramento et al., vs. United States of America et al. Subpoena ad respondendum.

87 UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that I received the within writ on the 14th day of July, 1915, and personally served the same on the same day on the Southern Pacific Company, a foreign corporation, by handing to and leaving with E. A. Van Wynen, who is the person designated under the statutes of California as the person upon whom all legal processes are to be served in matters concerning the Southern Pacific Company, a corporation in the State of California, a true and a attested copy thereof, in the city and county of San Francisco in said district.

Dated San Francisco, July 14th, 1915.

J. B. HOUGHAN,
United States Marshal.

By [signed] THOS. F. MULHALL,
Office Deputy.

Return on service of writ.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein-named Western Pacific Railroad Company by handing to and leaving a true and attested copy thereof with Warren Olney, one of the receivers appointed by the United States court as receiver for the said Western Pacific Railroad Company, personally at San Francisco, California, in said district, on the 23rd day of July, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.

By [signed] I. W. GROVER,
Office Deputy.

88

Return on service of writ.

UNITED STATES OF AMERICA,
Sou. District of Cal., ss:

I hereby certify and return that I served the annexed attested copy of subpoena ad testificandum on the therein-named Atchison, Topeka & Santa Fe Railway Co. by handing to and leaving a true and correct copy thereof with G. Holderhoff, jr., asst. sec. of the Atchison, Topeka & Santa Fe Railway Co., authorized to accept service, personally, at Los Angeles, Cal., in said district, on the 23rd day of July, A. D. 1915.

C. T. WALTON,
U. S. Marshal.

By [signed] D. S. BASSETT,
Deputy.

Subscribed and sworn to before me this 23d day of July, 1915.

[SEAL.]

WM. M. VAN DYKE,

Clerk, U. S. District Court, Southern District of California,

By [signed] CHAS. N. WILLIAMS,
Deputy.

I hereby certify that I did on the 26th day of July, A. D. 1915, serve upon H. U. Mudge, receiver of the Chicago, Rock Island and Pacific Railway Company, one attested copy of subpoena ad testificandum in the case of the Merchants' and Manufacturers' Traffic Association of Sacramento et al, vs. United States of America et al., at Chicago, Illinois.

By [signed] JOHN J. BRADLEY,
U. S. Marshal,
 JOHN S. ROBERTS,
Deputy.

Subscribed and sworn to before me at Chicago, Illinois, this 26th day of July, A. D. 1915.

[SEAL.]

CHRIS. F. GUNTHER,
Notary Public.

My commission expires March 20th, 1919.

Marshal's fees: 1 service, .50; 1 mile, .06—.56.

89 UNITED STATES OF AMERICA,
District of Colorado, ss:

I hereby certify that on the 28th day of July, A. D. 1915, at Denver, in said district of Colorado, I duly served a subpoena issued out of the United States District Court for the Northern District of California, dated the 10th day of July, A. D. 1915, wherein the Merchants' and Manufacturers' Association of Sacramento et al. are plaintiffs and United States of America et al. are defendants, upon one of the defendants therein named, i. e., Denver & Rio Grande Railroad Company, by delivering to John B. Andrews, as assistant secretary of said company, a certified copy of said subpoena.

S. J. BURRES,

United States Marshal,

By [signed] T. J. McCLUER,
Deputy Marshal.

Fees & costs: \$2.00.

Subscribed and sworn to me this 29th day of July, A. D. 1915.

[SEAL.]

CHARLES W. BISHOP,
Clerk, United States Dist. Court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION OF SACRAMENTO ET AL.
vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

I certify that I received on the 24th day of July, 1915, copy of a subpoena ad respondendum, issued on the 10th day of July, 1915, out of the United States Court, for the Northern District of California, second division, in case Merchants' and Manufacturers' Traffic Association of Sacramento et al. vs. United States of America et al., and served the same upon the Union Pacific Railroad Company, at Salt Lake City, in the district of Utah, on the 3rd day of August, 1915, by delivering the aforesaid copy to Joseph F. Smith, a director of the said Union Pacific Railroad Company, there being no officer of said Union Pacific Railroad Company of higher rank within the District of Utah upon whom service could be obtained.

AQUILA NEBEKER,

United States Marshal,

By [signed] L. H. SMYTH,
Chief Deputy.

Served copy of the within subpoena on the United States of America by personal service of same on Thomas W. Gregory, Attorney General of the United States, July 22, 1915.

Served copy of the within subpoena on the Interstate Commerce Commission by personal service of same on George B. McGinty, secretary of said commission, July 21, 1915.

[Signed] MAURICE SPLAIN,
U. S. Marshal, District of Columbia.

Endorsed: Filed Sept. 17, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

91 In Equity, No. 191. In the United States District Court, Northern District of California, Second Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion of the United States to dismiss the petition as amended.
Answer of the United States to the petition as amended.

92 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In Equity, No. 191.

Motion of the United States to dismiss the petition as amended.

Comes now the United States of America, respondent, by its counsel, and moves the court to dismiss the petition as amended in the above-entitled cause at the cost of the petitioners.

93 As grounds for this motion it is shown:

1. The petition as amended, including the reports and orders of the Interstate Commerce Commission in the several proceedings referred to therein and made a part thereof, is without equity on its face and does not state any cause of action against the respondent, and the court may not grant the relief prayed or any part of the same.

2. The petitioners, Merchants' & Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, do not bring the suit as common carriers or as shippers, but they bring the suit in the public interest. They have no such interest in the said orders sought to be annulled and enjoined as would entitle them to maintain the suit, and they have not shown, or attempted to show, any irreparable injury, or any other injury whatsoever, to them, or to any of them, for or by reason of said orders, and they have no standing in a court of equity to maintain the said suit.

3. There is a misjoinder of parties and alleged causes of action in that the petitioners seek to maintain a cause of action in the public interest against the United States of America and at the same time they seek to maintain a cause of action in the public interest against Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company. The petitioners have thus confounded an attempted suit against the United States with an attempted suit against the carriers.

4. The said orders of the Interstate Commerce Commission sought to be annulled and enjoined were entered on applications of numerous common carriers for relief from the provisions of section 4 of the act to regulate commerce as amended, who alone had the authority to make and file such applications. The statute contains no provision that the petitioners may make applications for relief from the provisions of section 4, or that the Interstate Commerce Commission may grant such relief if so applied for. The petitioners had no standing to institute the proceedings before the commission, and they are equally without any standing to institute the proceedings before the court. The suit now commenced at the instance of the said petitioners is beyond the jurisdiction of the court to hear and determine, and the same should be dismissed for want of jurisdiction.

5. The reports and orders of the Interstate Commerce Commission were regularly made and entered after full hearings and on evidence adduced on issues made by the proper parties before the commission, and the petition as amended does not show any lack of power or authority on the part of the commission to make and enter the said orders now sought to be annulled and enjoined.

95 6. The petition as amended does not show that there is, or may be, any confiscation of property of petitioners, or that the petitioners have been deprived of any right protected by

the Constitution of the United States, or of any other right within the jurisdiction of the court to protect.

7. The petition as amended is otherwise vague, uncertain, indefinite, and insufficient.

Wherefore, respondent prays that its said motion be sustained.

Answer of the United States to the petition as amended.

Comes now the United States of America, respondent, by its counsel, not waiving its motion to dismiss the petition as amended herein, but insisting upon the said motion now and at all times hereafter, and for answer to the petition as amended (hereinafter referred to as the petition), says:

I, II, III, IV, V, VI, VII, VIII, IX, and X. It admits that Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company are common carriers subject to the act to regulate commerce and the various and sundry acts amendatory thereof and supplementary thereto. As to the remaining allegations of paragraphs I to X, it has no knowledge of the matters and things alleged therein, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

96 XI. Subject to verification, it admits that the Interstate Commerce Commission made the findings and entered the order referred to as Exhibits A and B to the petition. With that exception, it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, of the matters and things alleged in paragraph XI, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XII. It denies that the Sacramento River is a navigable waterway during the greater part of the year, or during any part of the year, for deep-draft ocean-going vessels with full cargoes, or that such vessels have docked within the limits of that city. As to the other matters and things alleged in said paragraph XII, it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XIII. It denies that the San Joaquin River is a navigable waterway accessible to deep-draft vessels during the greater portion of the year or during any portion of the year. As to the other matters and things alleged in said paragraph XIII it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

97 XIV. It has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, of the matters and things alleged in paragraph XIV of the petition, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XV. It denies that Alviso is accessible at all times of the year or at any time of the year to boats of deep draft. As to the other matters and things alleged in paragraph XV it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XVI. It denies that San Jose, Santa Clara, Sacramento, and Stockton were and are entitled to terminal rates in manner and form as alleged. As to the other matters and things alleged in said paragraph XVI it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

98 XVII. It admits that the local rate from San Francisco to Sacramento is 24 cents per hundred pounds, but it alleges that said rate of 24 cents is the first-class rate, and is the lowest first-class rate for a haul of 90 miles in the United States. The schedule C commodities do not move on the said first-class rate, but on a much lower rate, and the illustration of the scale of rates referred to in paragraph XVII and the alleged losses consequent therefrom are misleading. Accordingly, and except as hereinafter appears in paragraph 27 of this answer, respondent denies the allegations contained in paragraph XVII and each and every part of the same.

XVIII. It denies that no changed conditions now exist or at any time have existed to cause the rail carriers to withdraw their terminal rates from the four cities mentioned or to increase the rates to said points. It denies that an increase of rates by the rail carriers to the four cities mentioned will be contrary to the provisions of section 4. As to the matters and things set forth in the remaining allegations of paragraph XVIII respondent has no knowledge, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XIX. It admits the filing of the complaint of Santa Rosa Traffic Association before the Interstate Commerce Commission and the order of January 5, 1914. It also admits the order of the commission of December 29, 1914, referred to in the petition. Because of the fragmentary manner in which the petitioners refer to the said reports and orders, the allegations of the petitioners with respect thereto are misleading, and respondent denies the said allegations and each and every part of the same. For the true facts with reference to said hearings and the said reports and orders, respondent refers to the report of the Interstate Commerce Commission in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 24 Interstate

87 Commerce Commission Reports, 46, made June 4, 1912; the report and order of the Interstate Commerce Commission on rehearing in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 29 Interstate Commerce Commission Reports, 65, made and entered January 5, 1915; and *San Jose Chamber of Commerce et al. v. Atchison, Topeka & Santa Fe Railroad Company et al.*, 32 Interstate Commerce Commission Reports, 449; also known as *I. & S. Docket No. 405, Transcontinental Commodity Rates to San Jose, Santa Clara, and Marysville, California*, made and entered December 29, 1914, copies of which reports and orders will be filed upon the hearing hereof. The said reports and orders should be considered together and not in a fragmentary manner and separately, as the petitioners seek to present them. Respondent points out that in the last of the said reports the commission expressly found that "the matter of the extension of terminal commodity rates to interior California points is under consideration by the commission on carriers' Fourth Section Applications Nos. 205, etc., and will be disposed of there." The said applications thus referred to are the applications upon which the commission entered the orders now sought to be annulled and enjoined, all of which the petitioners then and there well knew.

XX. It neither admits nor denies the matters and things alleged in Paragraph XX of the petition in manner and form as alleged, but in so far as the said matters and things, or any of them, may be 100 or may become, relevant and material, it refers to the report of the Interstate Commerce Commission in *Railroad Commission of Nevada v. Southern Pacific Company et al.*, 19 Interstate Commerce Commission Reports, pages 238 to 256, inclusive, and the supplemental report and order in *Railroad Commission of Nevada v. Southern Pacific Company et al.*, 21 Interstate Commerce Commission Reports, pages 329 to 384, otherwise known as "Applications for relief under the fourth section: Nos. 205, 342, 343, 344, 349, 350, and 352," certified copies of which reports and orders will be produced and filed upon the hearing hereof.

XXI. It admits that the carriers filed applications, known as Fourth Section Applications Nos. 205, etc., with the Interstate Commerce Commission for permission to file tariffs wherein lower rates would be charged on certain transcontinental westbound commodities. It alleges that said applications were made under the provisions of section 4 of the act to regulate commerce, as amended, and that no duty was imposed upon the commission to issue and serve specific notice of any hearing or hearings on said applications to the unknown and numberless persons, firms, corporations, traffic bureaus, associations, points of shipment, destinations of shipments, municipalities, governments, and the general public, who might then or thereafter be or become interested in any rates which may be fixed. It admits that the commission held the hearing beginning October 6, 1914, at Chicago, Illinois.

101 It specifically denies the allegation that "no notice of said hearing was given to any of the four cities above mentioned or

to any of the mercantile concerns or associations therein, nor were any of them brought in or made parties to said proceeding." On the contrary, respondent is informed and believes, and on such information and belief it charges as a fact, that one G. J. Bradley, then, as now, traffic manager of Merchants & Manufacturers' Traffic Association of Sacramento, who verified the petition and filed an affidavit herein on behalf of all of the petitioners, was present in the United States court room, Chicago, Illinois, on October 6, 1914, and subsequent days, before Examiner Henry A. Thurtell, of the Interstate Commerce Commission, who conducted the hearings on Fourth Section Applications Nos. 205, etc., at said time and place; and that the said G. J. Bradley was not only present at said time and place, but he then and there in writing entered his appearance for the parties represented by him, including the Merchants & Manufacturers' Traffic Association of Sacramento. Subsequently, on November 23, 1914, the oral arguments on the law and the evidence on said Fourth Section Applications Nos. 205, etc., were held in the hearing room of the Interstate Commerce Commission, and the supplemental report and amended order, referred to in the petition, were filed and entered January 29, 1915. Subsequently, and within the time prescribed by the said supplemental report
102 of January 29, 1915, the carriers submitted the plan for the adjustment of rates to back-haul points. Subsequently, on April 12-13, 1915, the oral arguments on the law and the evidence on said Fourth Section Applications Nos. 205, etc., were again held in the hearing room of the Interstate Commerce Commission at Washington, D. C., in the light of the said plan submitted. On April 12, 1915, the said same G. J. Bradley, representing the cities of Sacramento and Stockton, California, and who verified the petition and filed an affidavit herein on behalf of all of the petitioners, appeared at said time and place and orally addressed the Interstate Commerce Commission on behalf of the said two cities. At no time during the said hearing of April 12-13, 1915, which was the last hearing held on said Fourth Section Applications Nos. 205, etc., either on the oral argument or otherwise, though full opportunity was presented to do so, did the said cities of Sacramento and Stockton, represented by the said G. J. Bradley aforesaid, make any complaint to the Interstate Commerce Commission of any lack of opportunity to be heard or of any lack of notice or knowledge of the proceedings in which they were actively participating.

Respondent alleges that at no time during all of the said hearings did the petitioners herein, or any of them, ever make any objection or complaint of any lack of notice or irregularity in the procedure thereof; on the contrary, they were at all times satisfied therewith. Inasmuch as the said cities named, and each of
103 them, through their representatives, were cognizant at all times of the said proceedings, if they failed to appear, or to adduce sufficient evidence, or adequately to represent themselves, they are now estopped to challenge the validity of the said orders or

either of them for or by reason of their own laches, and, respondent alleges that, by reason thereof, the said petitioners, and each of them, are now estopped to challenge the validity of the said orders for or by reason of any matter or thing alleged in the petition.

XXII. It denies that San Jose, Santa Clara, Sacramento, and Stockton were either necessary or proper parties to the said proceeding. It alleges that, as hereinbefore shown, the said cities, or some of them, were represented at all of said hearings, were fully heard, and they had full opportunity to be further heard had they so desired. It further alleges that all of the hearings on Fourth Section Applications Nos. 205, etc., were full, adequate, and complete, and were in all respects in accordance with the terms and provisions of the act to regulate commerce and not in any respect in violation thereof. Respondent alleges that as far back as April 1, 1911, when Fourth Section Applications Nos. 205, etc., were pending and being heard before the Interstate Commerce Commission, the said G. J. Bradley, representing the cities of Sacramento and Stockton, California, appeared in the public hearing room of the commission at Washington, D. C., at a hearing duly fixed by the commission, and orally argued on behalf of the said two
104 cities their relations to the said applications. Subsequently on or about June 21, 1911, the said G. J. Bradley, representing the said two cities aforesaid, filed with the Interstate Commerce Commission an elaborate brief of many printed pages, covering the same subject matter wherein, inter alia, on behalf of the said two cities he said:

"The carriers have presented their testimony and have argued the case at length, both orally and by brief, and this question is now before your honorable body for decision.

* * * * *

"In the short time allotted to me at the Washington hearing I attempted to show to the commission that the questions under consideration were the rates and conditions of to-day, and that the present competition was the controlling factor in the rail rates.

* * * * *

"The early history of California shows that seagoing vessels came to Sacramento direct from Atlantic ports. It would be idle for us to say to this commission that vessels of the present size and draft, plying between San Francisco and Atlantic ports, could reach Sacramento, or that they ever could have done so, but it must be remembered that fifty years ago no such vessels were sailing the seas as now."

Respondent denies that the said four cities named were arbitrarily designated as back-haul points, and it denies each and every other allegation in the said paragraph XXII contained not herein specifically admitted or denied.

105 XXIII. It denies that the suggestion of the Interstate Commerce Commission referred to in paragraph XXIII was

not based on any evidence, and it denies that the commission by its decision and order of April 30, 1915, arbitrarily fixed the rate, and it denies that the decision and order, if allowed to stand, will be unjust and discriminatory against receivers and shippers of freight represented by petitioners, and will cause them irreparable damage and injury. It denies that the said order unjustly affects the petitioners and deprives them of rights without representation and takes from them property without due process of law, or denies to them the equal protection of the law.

XXIV. It admits the rail carriers have prepared and filed certain tariffs as a compliance with the terms and provisions of said order of April 30, 1915. It denies that rates to said cities for Commodity Schedule A from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard will be 7 per cent, 15 per cent, and 25 per cent in excess of the terminal rates. On the contrary, it alleges that rates for Commodity Schedule A, without exception, are based and fixed solely on the hard-and-fast long-and-short-haul clause, as provided by section 4, as amended, without relief therefrom by the commission. Respondent alleges that the matters and things alleged in paragraph XXIV, in manner and form as alleged, are inaccurate, incorrect, and misleading, and respondent denies the same, in manner and form as alleged, and each and every part of the same.

106 XXV. It denies the allegation of paragraph XXV, that the commission arbitrarily ordered San Jose, Santa Clara, Sacramento, and Stockton to be stricken from the list of California terminals. Subject to verification, it admits the excerpt from the report of the commission, but it alleges that for the matters and things therein contained the said report should not be considered in a fragmentary manner but should be considered in its entirety. It denies that the action of the commission unjustly discriminates against the four complaining cities, with the result of unsettling business conditions and causing irreparable damage and injury to the business interests of the four cities mentioned. As to the remaining allegations of said paragraph XXV, it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XXVa. While it denies that the petitioners, or either or any of them, were either necessary or proper parties to the proceeding before the Interstate Commerce Commission in fourth section applications Nos. 205, etc., it admits that the petitioners filed what purported to be and what was designated by them as a petition for rehearing, and notice of denial was given. It specifically denies that the petitioners were ever denied any opportunity to be heard if and when they were entitled to be heard. It denies each and every other allegation in the said paragraph XXVa contained in manner and form as alleged.

107 XXVb. If, during the times mentioned, the rail carriers extended terminal rates to the four cities mentioned because of

water competition, it denies that there are no changed conditions to justify any increase in such freight rates or to justify the order of the Interstate Commerce Commission authorizing rail carriers to increase their charges on such freight destined to the four cities mentioned. As to the other matters and things alleged in said Paragraph XXVb, it denies the same in manner and form as alleged, and each and every part of the same.

XXVI. It denies that the orders of the Interstate Commerce Commission are contrary to law and equity, are discriminatory and unjust, or were made without said cities having their day in court, or without giving them an opportunity to show the unreasonableness thereof. It denies that no justification for the increase of rates was shown, and it denies that the order of April 30, 1915, was without evidence and warrant of law. It denies that the petitioners have been denied the equal protection of the law and deprived of property without due process of law to their irreparable damage and injury. It denies that unless the enforcement of the said orders be stayed that great and irreparable damage and injury will result to the petitioners.

XXVII. Further answering the said petition, and each and every part of the same, respondent alleges that after section 4 of the act to regulate commerce of February 4, 1887, was amended on June 18, 1910, the carriers filed their fourth section applications Nos. 205, 342, 343, 349, 350, and 352, for relief from the provisions of said section 4, as amended, and after full hearings the Interstate Commerce Commission filed its reports, 21 Interstate Commerce Commission Reports, 329, to which reference is made, and 21 Interstate Commerce Commission Reports, 400, to which reference is made, in pursuance of which said two reports the commission also entered its order. Subsequently, the said order was annulled and enjoined by the judgment of the United States Commerce Court, Atchison, Topeka & Santa Fe Railway Co. v. United States, 191 Fed. Rep., 856, and on appeal the judgment was reversed by the Supreme Court of the United States, and the said order was in all respects sustained in Intermountain Rate cases, 234 U. S., 476, to which reference is made. Thereupon the carriers undertook to and did in part comply with the provisions of the said order, but filed further applications for further relief from the provisions of said section 4 as amended. Other hearings were had, and on January 29, 1915, the Interstate Commerce Commission filed its supplemental report, 32 Interstate Commerce Commission Reports, 611, and an amended fourth section order in which the entire subject matter referred to in the petition was fully considered, and which are referred to in the petition, a certified copy of which said supplemental report and amended order will be produced upon the hearing hereof, and it is prayed that the same may be taken and considered as if fully set out herein.

109 Acting upon the request of the Interstate Commerce Commission, the carriers, within the time prescribed by the said supplemental report of January 29, 1915, submitted the plan for

the adjustment of rates to the back-haul points. Other hearings were then held, after due notice given, and on April 30, 1915, the Interstate Commerce Commission filed its second supplemental report, 34 Interstate Commerce Commission Reports, 13, and entered its second amended fourth section order, which are referred to in the petition, a certified copy of which said second supplemental report and of said second amended order will be produced and filed upon the hearing hereof, and it is prayed that the same may be read and considered as if fully set out herein.

Respondent further alleges that all of the class rates to coast terminal points, on transcontinental westbound traffic, without exception, are based and fixed solely on the hard and fast long and short haul clause, as provided by section 4, as amended, without relief therefrom by the commission.

Commodities, for the purpose of transcontinental westbound rate making, were grouped into three schedules, viz, A, B, and C. Rates for commodity schedule A, like all class rates, without exception, are based and fixed solely on the hard and fast long and short haul clause, as provided by section 4, as amended, without relief therefrom by the commission. Rates for commodity schedule B, without exception, are based and fixed solely on the order of the 110 commission, of date July 31, 1911, fixing zones and percentages, sustained in Intermountain Rate cases, 234 U. S., 476, and fully set out in the report of the commission of January 29, 1915. Rates for commodity schedule C are the rates fixed by the Interstate Commerce Commission in the order of April 30, 1915, which order, in so far as the same applies to them, the petitioners now seek to annul and enjoin. The order of the commission in the instant case is finis of coast terminal rate adjustments under fourth section applications Nos. 205, etc. All of the coast terminal rates fixed by the commission in all of the adjustments under section 4, as amended, have been accepted by the carriers and the public without protest, except the four cities named as to the last adjustment, throughout the entire shipping and transportation world. Any disturbance of the said order, at the instance of the said cities, may imperil the entire transcontinental westbound rate structure fixing coast terminal rates and adjustments in all of the proceedings aforesaid.

XXVIII. It alleges that the matters and things alleged in the petition, and sought to be put in issue, were all before the Interstate Commerce Commission, and were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the act to regulate commerce. In its several reports in writing with respect thereto, made after full hearings and due notice to all of the parties who were entitled to the same, which 111 state its conclusions, together with its decisions, orders, or requirements in the premises, the matters and things of which complaint is now made were fully considered and foreclosed

by findings of fact, based on substantial evidence adduced on the issues made by the parties.

XXIX. Further answering the said petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied, or otherwise traversed, it denies—

(a) Any fact or facts alleged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(b) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(c) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(d) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(e) Any fact or facts alleged in said petition, or any part of the same, which attack or which seek to attack the reports and orders of the Interstate Commerce Commission, and to show facts
112 other than what the said reports and orders show on the face thereof.

(f) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and orders which, as shown on the face thereof, in fact were not so found.

(g) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and orders.

(h) Each and every allegation in the said petition contained, not herein specifically admitted or denied.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate.

JOHN W. PRESTON,

United States Attorney,

Northern District of California, Second Division.

BLACKBURN ESTERLINE,

Special Assistant to the Attorney General.

Endorsed: Filed Aug. 11, 1915, W. B. Maling, clerk; by J. A. Schaertzer, deputy clerk.

113 In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In Equity,
No. 191.

Appearance of the Interstate Commerce Commission.

I hereby enter the appearance of the Interstate Commerce Commission and of myself as counsel in the above-entitled cause.

JOS. W. FOLK,
Counsel for the Interstate Commerce Commission.

Endorsed: Filed August 13, 1915. Walter B. Maling, clerk.

114 Equity No. 191. In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion to dismiss and answer of the Interstate Commerce Commission. Joseph W. Folk, counsel for Interstate Commerce Commission.

115 In the United States District Court for the Northern District of California, second division.

MERCHANTS AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

v.

In Equity, No. 191.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion to dismiss and answer of the Interstate Commerce Commission.

Now comes the Interstate Commerce Commission and moves to dismiss the petition as amended herein for the following reasons:

116 (1) The petitioners complain of the refusal of this respondent to make an order or orders. Said nonaction of this respondent is not within the jurisdiction of this court to review. The only question that can be considered by the court is the validity of the orders that were made and not the validity or invalidity of orders that this respondent did not make.

(2) The court has no jurisdiction to make an order concerning railroad rates nor to direct the Interstate Commerce Commission to make an order. Rate-making questions are by the act to regulate commerce within the exclusive primary jurisdiction of the Interstate Commerce Commission. The court has power to pass upon the validity of the orders that were made, but it has no jurisdiction as to the legality of the orders the commission did not make and which it refused to make. The law gives the court power only to review the orders of the commission. The reasons of the commission for not making an order are manifestly beyond the competency of any court to examine. The jurisdiction of the court is confined to passing upon the validity of the orders actually made, and it has no warrant of law to go beyond that.

(3) Because certain cities are not included in the orders, which petitioners allege should have been included, petitioners seek to annul the orders that were made and render them void as to those cities that are included. Whatever the rights of petitioners, they can not go to the extent of destroying the rights of those named in the orders. The petitioners are asking the court to make orders which the commission has declined to make and to annul orders

117

made by the commission because the commission would not make different orders which petitioners claim it should have made. The petitioners challenge as invalid not what the commission has done but what it has declined to do, and this court is asked to assume with reference thereto administrative functions expressly and exclusively delegated to the Interstate Commerce Commission by the act to regulate commerce.

(4) The petition as amended shows that the orders complained of are under section 4 of the act to regulate commerce. This section refers exclusively to carriers and deals with a rate-making problem only. Prior to the amendment of 1910 the carrier initiated the rate without action by the commission. As amended the consent of the commission is a prerequisite; but there is no provision in that section for trying out controversies between cities or localities. Petitioners are not parties to the orders made by the commission under section 4 nor were they necessary parties before the commission. The carriers asked permission of the commission to depart from the fourth section which under the authority given in the fourth section was granted by the commission as to certain cities. The act to regulate commerce does not require that all or any cities and localities to be affected by the proposed rates should be made parties in the proceedings before the commission. If it is claimed that the rates

118 authorized operate unfavorably to any city or any locality, there is a remedy provided in other sections of the act which allows cities and localities to file complaints with the commission and have their controversies tried out in regular hearings. Under the act to regulate commerce the petitioners herein must present their complaint to the commission, and the court has no primary jurisdiction to hear such controversies. The petitioners must, as required by the act to regulate commerce, first go before the commission, and until the commission has acted the court has no jurisdiction in the premises. Petitioners have no standing in court to ask an injunction against an order conferring a right upon the carriers under section 4.

(5) The petitioners ask the court to restrain the operation of tariffs filed by the carriers in accordance with the orders made by the Interstate Commerce Commission. An injunction against the orders can not prevent the tariffs already filed under the provisions of section 6 going into effect. No change can be made in the tariffs by the carriers under section 6 without due notice. The court has no more power to change the tariffs filed than the carriers have.

(6) Under section 4 of the act to regulate commerce the discretion as to the relief can be exercised only by the commission, and the determination of questions of fact as to similarity of circumstances and localities is exclusively within the jurisdiction of the commission.

119 (7) The reports and orders of the commission were regularly made and entered after full hearing and on evidence adduced on issues made by the proper parties before the commis-

sion, and said orders being based upon substantial evidence are final and beyond the competency of a court to review.

(8) The court can not by injunction or otherwise change a rate or make a rate or alter an order made by the commission as petitioners in this case ask the court to do.

(9) This respondent had full jurisdiction under the act to regulate commerce to enter the orders referred to in the petition, and said orders being based upon substantial evidence are valid exercises of the discretion conferred upon this respondent by the act to regulate commerce.

Wherefore respondent prays that the petition as amended be dismissed.

Answer of the Interstate Commerce Commission to the petition as amended.

The Interstate Commerce Commission having entered its appearance, in the above-entitled cause as a respondent, now and at all times saving to itself all benefit and advantage of exceptions to the petition as amended (hereafter referred to as the petition) for answer thereunto or to so much or such parts thereof as this respondent is advised it is material to make answer, answering says:

I.

120 This respondent admits the organization of the several respondent railroads, and that they are and each of them is engaged in interstate commerce and each has filed tariffs with this respondent. This respondent admits, so far as the allegations may be material and so far as they do not contradict or seek to contradict and are not inconsistent with any fact or facts found by this respondent in its reports and orders, the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the petition, and respondent denies each statement in said paragraphs of the petition inconsistent with or that may contradict or seek to contradict any fact or facts found by this respondent in its reports and orders hereinafter referred to and made exhibits of this answer.

II.

This respondent denies that the Sacramento River is a navigable waterway during the greater part of the year or during any part of the year for deep-draft, ocean-going vessels with full cargoes. Respondent states that ocean-going vessels do not dock at Sacramento. Respondent states, as shown by its report, that ocean-going vessels deliver freight destined to Sacramento at the port of San Francisco, and that such freight is transferred by rail or local water carrier from San Francisco to Sacramento.

III.

Respondent denies that the San Joaquin River is a navigable waterway accessible to deep-draft vessels during the greater portion of the year or during any portion of the year. Respondent states, as shown by its report, that ocean-going vessels do not deliver their freight at Stockton by going up the San Joaquin River, but that such freight for Stockton is delivered at San Francisco and transported from San Francisco to Stockton by rail or local water carrier.

IV.

Answering paragraphs 14 and 15 of the petition, respondent states, as shown by its report, that ocean-going vessels do not deliver their freight at San Jose or Santa Clara, but that such freight destined to these points is delivered at San Francisco and transported to San Jose and Santa Clara from San Francisco by rail or local water carrier. Respondent states further that there was no testimony in the record before this respondent to show that the Atlantic steamship lines delivered any freight whatever to the town of Alviso.

V.

Answering paragraphs 16 and 17 this respondent denies that San Jose, Santa Clara, Sacramento, and Stockton are entitled to terminal rates in manner and form as alleged. Respondent states, as shown in the record before it and as set out in its several reports hereinafter referred to and made exhibits to this answer, the reason which in the past induced the rail carriers to make terminal rates to these four cities was the fact that the ocean carriers between the east and west coasts of the United States, in order to secure tonnage for their ships, formerly absorbed the inland locals from the port of San Francisco. The passage of the Panama Canal act and the opening of the Panama Canal caused the ocean carriers to discontinue absorbing the local rail rates, for by doing so the ocean carriers would, by the provisions of the Panama Canal act, subject themselves to the jurisdiction of the Interstate Commerce Commission and of the act to regulate commerce. This the ocean carriers, according to the record, desired to avoid in order to be free to change their rates at will and to make special contracts at different rates which they could not do if governed by the act to regulate commerce. The discontinuance of these absorptions changed the competitive conditions at San Jose, Sacramento, Santa Clara, and Stockton, which cities are not similarly situated as the terminal points named in the orders. Respondent further states that if Sacramento, Stockton, Santa Clara, and San Jose, though not as advantageously situated with reference to ocean rates as San Francisco, are entitled to the same railroad terminal rates as San Francisco, then many other cities

of California, Nevada, and other States would have as good a right to claim terminal rates, and the giving of terminal rates to Sacramento, Stockton, Santa Clara, and San Jose would result in a preference to these points so given terminal rates and, discrimination against other points just as much entitled to terminal rates by reason of location but not given such rates.

Further answering this, respondent admits that the local
123 rate from San Francisco to Sacramento is 24 cents per 100 pounds, but it states that said rate of 24 cents is a first-class rate and is one of the lowest first-class rates in the United States for a haul of 90 miles. Respondent states that schedule C commodities do not move on a first-class rate but on a lower rate, and as petitioners only complain as to schedule C, the scale of rates referred to in paragraph 17 and the alleged losses resulting therefrom are misleading. Respondent states that the new tariffs filed, of which petitioners complain, do not increase the rates to San Jose, Santa Clara, Sacramento, and Stockton as alleged in the petition, but, on the contrary, such rates with few exceptions are reduced as compared with what they formerly were. The complaint of petitioners appears to be because the rates to San Jose, Santa Clara, Sacramento, and Stockton were not reduced as much as were the rates to San Francisco differently situated. Respondent states that confiscation can not be predicated upon increased rates if such increased rates be reasonable, and that this respondent has not found the rates filed under its orders here in controversy to San Jose, Santa Clara, Sacramento, and Stockton to be unjust or unreasonable rates to those points.

VI.

Answering paragraph 18, respondent denies that no changed conditions exist or at any time have existed to cause the rail carriers to withdraw their terminal rates from San Jose, Santa Clara,
124 Sacramento, and Stockton. Respondent denies that an increase in rates by the rail carriers to the points mentioned would be contrary to the provisions of section 4.

VII.

Answering paragraph 19, this respondent admits the filing of the complaint by the Santa Rosa Traffic Association of Santa Rosa, Cal., before this respondent, alleging that it was being discriminated against in the matter of rates in that it was alleged to be similarly situated to San Jose, Santa Clara, and Marysville, and that those places were given terminal rates by the carriers which were denied to Santa Rosa. This respondent states that it made its order in said proceeding requiring the carriers so long as they applied terminal rates to San Jose, Santa Clara, and Marysville to apply no higher rates to Santa Rosa.

Respondent further states that the carriers elected to remove the discrimination against Santa Rosa by withdrawing the application of terminal rates to San Jose, Santa Clara, and Marysville, and the carriers filed tariffs to become effective April 1, 1914, under which tariffs San Jose, Santa Clara, and Marysville were eliminated from the various lists of terminals in California. San Jose, Santa Clara, and Marysville then filed complaint before this respondent alleging that if the application of terminal rates to those points were withdrawn, these cities would be subjected to unjust discrimination
125 in favor of 182 other California points taking terminal rates.

This respondent found that the withdrawal of the terminal rates to San Jose, Santa Clara, and Marysville, while continuing such rates to other interior California points, would subject San Jose, Santa Clara, and Marysville to unjust discrimination, and the tariffs whereby these rates were proposed to be withdrawn were ordered canceled by this respondent. For the facts in reference to said hearings and said reports and orders respondent refers to its report in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 24 I. C. C., 46, made June 4, 1912; the report and order of respondent on rehearing of said cause, 29 I. C. C., 65, made January 5, 1915; and *San Jose Chamber of Commerce et al. v. Atchison, T. & S. F. Ry. Co. et al.*, 32 I. C. C., 449, also known as I. & S. Docket No. 405, *Transcontinental Commodity Rates to San Jose, Santa Clara, and Marysville*, made and entered December 29, 1914. The proceeding above referred to brought by the San Jose Chamber of Commerce is known as No. 6717, and the copy of the report and order of this respondent will be filed on or before the hearing.

Respondent further states that the matter of extension of terminal rates to interior California points was then under consideration by this respondent, and, as was stated in respondent's report in the above-entitled cause, this respondent was then investigating with
126 the view of determining what California cities were entitled to terminal rates, said investigation being under an application of the carriers for relief under the fourth section and which investigation resulted in the orders of this respondent herein complained of whereby the carriers were given relief from the provisions of the fourth section as to San Diego, Wilmington, East Wilmington, San Pedro, East San Pedro, San Francisco, and Oakland, Cal.; Astoria and Portland, Oreg.; Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, Cosmopolis, Tacoma, and Seattle, Wash.; and this respondent found that the cities named were so situated as to be entitled to terminal rates.

VIII.

Answering paragraph 20 of the petition, this respondent admits the filing of complaint before it by the railroad commission of Nevada under which this respondent entered into an investigation of western freight charges to the intermountain country. Copies of its

opinions Nos. 1365 and 1623 in said matter will be produced and filed upon hearing hereof and are hereby made parts of this answer. Respondent denies that it determined in those cases that San Jose, Sacramento, and Stockton were entitled to terminal rates. Respondent states that in its reports and opinions in said matters it was merely describing the situation on the Pacific coast as then existing, and it was not passing upon the propriety of terminal rates at these different points.

127

IX.

Answering paragraph 21 of the petition, respondent admits that following the decisions and orders in the Intermountain Cases, known as Fourth Section Applications Nos. 205, etc., the rail carriers petitioned this respondent for permission to file new tariffs wherein lower rates would be charged on certain transcontinental westbound commodities, and that a hearing in said matter was had in Chicago beginning October 6, 1914. Respondent states that said proceeding was an application by the carriers for relief from the provisions of the fourth section, and that it was not necessary, and the act to regulate commerce did not require that all the cities and communities that might be affected by the rates should be made parties to said proceeding, but under other sections of the act any city desiring to complain of rates had a remedy given of coming before this respondent and having its rights determined.

Copies of the proceeding and final order referred to in paragraph 21 of the petition will be produced and filed upon hearing hereof and are hereby made parts of this answer.

This respondent denies each and every allegation in said paragraph 21 inconsistent with its findings and order aforesaid. Respondent states that the city of Sacramento, while not a necessary party to the proceeding above mentioned, was represented at 128 the hearing by G. J. Bradley, who entered his appearance at said hearing in behalf of the Merchants & Manufacturers Traffic Association of Sacramento. Said G. J. Bradley, representing the Merchants & Manufacturers Traffic Association of Sacramento, was present in the United States court room at Chicago, Ill., on October 6, 1914, and subsequent days before Examiner Henry A. Thurtell, who conducted the hearings on Fourth Section Applications Nos. 205, etc., at said time and place.

Respondent further states that on November 23, 1914, the oral arguments in said Nos. 205, etc., were held in the hearing room of the Interstate Commerce Commission. Subsequently, and within the time prescribed by said supplementary report of January 29, 1915, the carriers submitted a plan for the adjustment of rates to back-haul points. Subsequently, on April 12 and 13, 1915, further oral arguments on the law and evidence on said Fourth Section Applications Nos. 205, etc., were heard in the hearing room of the Interstate Commerce Commission at Washington, D. C. On April 12, 1915,

said G. J. Bradley, representing the cities of Sacramento and Stockton, appeared at said time and place and orally addressed this respondent in behalf of the cities of Sacramento and Stockton. This respondent states that at no time during the hearing of April 12 and 13, 1915, or at any other time, either in oral argument or otherwise, though full opportunity was presented to do so, did the said cities of Sacramento and Stockton, represented by said G. J.

129 Bradley aforesaid, make any complaint to this respondent of any lack of opportunity to be heard, or of any lack of notice and knowledge of the proceedings in which they were actively participating. Respondent states that at no time in all of said hearings did the petitioners, or any of them, ever make any objection to or complaint of any lack of notice or irregularity in the procedure thereof. On the contrary, the petitioners, through their representatives, were cognizant at all times of the proceedings and urged upon this respondent the adjustment of rates to back-haul points proposed by the carriers.

Respondent states that while under a fourth section application by carriers no notice to cities and communities is required, the petitioners had notice of such hearing and were represented at such hearing in whole or in part. Respondent states that the petitioners herein filed before this respondent a petition for rehearing. Said petition for rehearing filed in behalf of all the petitioners herein states on page 2:

"On April 12, 1915, a hearing was held in Washington, D. C., at which time the carriers presented to the commission a plan for the adjustment of these rates as directed; and at this hearing your petitioners were represented in whole or in part and urged upon the commission the adoption of the plan proposed; with the exception of San Francisco and the Railroad Commission of Nevada no objection was offered to the plan proposed."

130 Respondent therefore states that if notice of said proceeding were necessary to be given to the petitioners, which it was not under a fourth section application by the carriers, the denial by petitioners of knowledge of the hearing appears to be refuted by their own petition for rehearing.

X.

Answering paragraph 22 of the petition, respondent states that the act to regulate commerce does not require that cities affected by the proposed rates shall be made parties to the petitions by the carriers for relief under the fourth section. Respondent states that there is no duty imposed upon this respondent by the act to regulate commerce to give notice of hearings on fourth section applications to unknown and innumerable firms, corporations, traffic bureaus, municipalities, shippers, and the general public, who might then or thereafter be or become interested in any rates to be fixed. This respondent states, however, that Sacramento was represented at said

hearing which resulted in the order of January 29, 1915, by G. J. Bradley, who appeared for the Merchants & Manufacturers Association of Sacramento, as stated in the preceding paragraph of this answer. Respondent states that all of the petitioners were apprised of said hearing, and all of them urged upon this respondent the adoption of a schedule of rates to back-haul points proposed by the carriers and all of said petitioners were fully aware of the
 131 proceedings. Respondent further states that there was abundant evidence to sustain the finding of respondent fixing the terminal points named in the orders complained of, and this respondent denies that Stockton, San Jose, Santa Clara, and Sacramento are surrounded by the same conditions and circumstances as are the terminals mentioned in the order. Respondent further states that the determination of these questions of fact is by the act to regulate commerce within the exclusive primary jurisdiction of this respondent. Respondent denies that the right to be designated as a California terminal and to receive westbound transcontinental freight at terminal rates was taken from the cities named without evidence or without due process of law, and respondent states that its findings and orders are based upon substantial evidence, and that there are abundant facts in the record to sustain its findings and orders as aforesaid. Respondent denies that petitioners have been denied the equal protection of the law, and respondent states that its findings and orders are in accordance with the facts and under and by virtue of the authority conferred upon this respondent by the act to regulate commerce. Respondent further states that discretion as to the relief under the fourth section is given by the act to regulate commerce to this respondent, and that the jurisdiction of the court is confined to passing upon the legality or illegality of orders made by this respondent, and the court has no power over
 orders that this respondent did not make and refused to make.

132 Petitioners complain of the orders, not because they name the cities set out in the order as terminal points, but because they do not name Stockton, San Jose, Sacramento, and Santa Clara in addition to those named. The petitioners therefore challenge as invalid not what this respondent has done, but what it has not done, and this court is asked to assume with reference thereto administrative functions expressly and exclusively delegated to this respondent by the act to regulate commerce. Respondent denies each and every allegation in said paragraph 22 not herein specifically admitted or denied.

XI.

Answering paragraph 23, this respondent states that the hearing on April 12 was a continuance of the hearing held on October 6, 1914, which resulted in the report and order of January 29, 1915. Respondent states that the particular subject matter of this hearing as announced by this respondent was the matter of rates to intermediate points, which included San Jose, Santa Clara, Sacramento,

and Stockton. Respondent states that Sacramento was represented at this hearing, as at the former hearing, by G. J. Bradley. Respondent denies that its report in this case is contrary to the views expressed in its report of January 29, and this respondent refers to its reports and orders for accuracy and denies any statement in said petition contrary to or inconsistent with the statements in
133 said report and order of April 15, 1915, copies of which report and order will be produced and filed upon hearing hereof and are hereby made parts of this answer. This respondent, in its report of January 29, 1915, suggested two ways of constructing rates to intermediate points, and asked the carriers to submit a plan for the arrangement of these rates on one of the methods suggested. Respondent states that after a full hearing on April 12 and 13, 1915, it outlined a plan which in its judgment and under the authority given it by the act to regulate commerce seemed most clearly just and reasonable. Copies of said report and order of April 30, 1915, will be produced and filed upon hearing hereof, and are hereby made parts of this answer. This respondent denies that by its decision and order of April 30, 1915, it arbitrarily fixed the rate, and denies that the decision and order, if allowed to stand, will be unjust and discriminatory to the receivers and shippers of freight represented by petitioners, or that they will be caused irreparable damage and injury.

Respondent denies that the said orders are unduly discriminatory and deprive petitioners of rights without representation and take from them property without due process of law and deny to them the equal protection of the law.

XII.

Answering paragraph 24, this respondent admits that the rail carriers have prepared and filed their tariffs in compliance with
134 the terms and provisions of the said order of April 30, 1915.

Respondent denies that rates to said cities for commodity schedule A from Chicago points, Buffalo and Pittsburgh points, and the Atlantic seaboard will be 7 per cent, 15 per cent, and 25 per cent in excess of the terminal rates. On the contrary, it alleges that rates for commodity schedule A, without exception, are based and fixed solely on the long and short haul clause as provided by section 4, as amended, without relief therefrom by the commission. Respondent alleges that the matters set out in paragraph 24 are misleading, and respondent denies the same in manner and form as alleged and each and every part of the same.

XIII.

Answering paragraph 25, respondent states that the rates from all points east of the Missouri River to Pacific coast points are the same, and that if there is a 75-cent rate on any article from the Atlantic seaboard to the Pacific coast the carriers maintain from Buffalo, Chicago, and the Missouri River the same rate. This is in accordance

with the fourth section of the act to regulate commerce, which restrains a carrier from making a greater charge from an intermediate point than from a more distant point. Upon application this respondent may permit the departure from the fourth section, but in this instance the carriers have made no such application. The
 135 application in this case, which resulted in the orders complained of, was for relief as to the points of destination, and there was no relief asked for as to points of origin. As to rates at points of destination the carriers did petition the respondent for authority to continue lower rates to the Pacific coast terminals and higher rates to intermediate points. Respondent, in prescribing the extent to which these carriers might be relieved, took into account the necessity and propriety of lower rates to the more distant points and examined into the relations between the rates established in the more distant and the higher rated intermediate points. Respondent denies it arbitrarily required that San Jose, Sacramento, Stockton, and Santa Clara should be stricken from the list of terminals. Respondent did require, however, and had a right to require, that the carriers should show at each point to which they asked to continue the lower rates the competitive necessity existing at such point which justified the lower rate thereto. Respondent states that no such competitive necessity was shown to exist at Sacramento, Santa Clara, San Jose, and Stockton. This competitive condition was shown to exist at San Francisco, Oakland, and certain other points. Respondent states that the excerpt from its opinion of January 29, 1915, set out in paragraph 25 of the answer, should be considered in connection with its report as an entirety. Respondent denies that by its action aforesaid
 it unjustly discriminated against petitioners. Respondent
 136 states that irreparable damage and injury can not be predicated upon change of rates if the changed rates be reasonable, as respondent found the rates here in controversy to be.

XIII.

Answering paragraph 25a, respondent denies that the petitioners were ever denied an opportunity to be heard. Respondent states that petitioners had full opportunity to be heard, though petitioners were not required to be parties to the fourth section application filed by the carriers; and petitioners may, under section 13 of the act to regulate commerce, which specifically provides for such controversies, file their complaint before this respondent and have their case adjudicated. Respondent states that the petitioners filed a petition for rehearing before respondent, in which petition they alleged the petitioners were represented in whole or in part at the hearing before this respondent on April 12 and 13, 1915, and urged upon this respondent the adoption of the plan proposed by the carriers. Respondent states that said petition for rehearing was received by this respondent June 22, 1915, was duly considered, and denied June 26, 1915, and notice of the denial of the petition was served upon the parties June 30, 1915. Respondent further denies each and every allegation in said paragraph 25a in manner and form as alleged.

Answering paragraph 25b, petitioners are asking this court to take original jurisdiction of rate-making questions, and of contro-
137 versies between cities and localities over rates. The petition herein should have been filed before this respondent, and this court has no jurisdiction to consider the rate-making questions involved until this respondent has acted upon them.

Further answering paragraph 25b, this respondent denies that there are no changed conditions to justify the order of this respondent herein, and respondent states that the changed conditions have been fully set out in other paragraphs of this answer to which reference is hereto made. Respondent denies each and every allegation in said paragraph 25b not herein specifically admitted or denied.

Respondent denies that its said orders are contrary to law or discriminatory and unjust, or were made without the parties entitled to be heard having an opportunity to be heard, and it denies that no justification for increase of rates was shown, and states that its said orders are based upon substantial evidence, and are fully warranted by law.

Further answering, respondent states that rates to the Pacific coast, and what cities on the Pacific coast are entitled to terminal rates, are matters that have been considered by this respondent for many years, as appears from the reports of this respondent as above set out.

After the fourth section of the act to regulate commerce was amended, June 18, 1910, the carriers filed their Fourth Section Applications Nos. 205, etc., for relief from the provisions of section
138 4, as amended, and after hearing and consideration the respondent filed its reports, 21 I. C. C., 329, and 21 I. C. C., 400, to which reference is made for information. The orders made in accordance with said reports were attacked by the carriers and sustained by the Supreme Court of the United States in Intermountain Rate Cases, 234 U. S., 476. Thereupon the carriers complied in part with the provisions of said order and filed further application for relief from the provisions of section 4, resulting in the order of January 29, 1915. Acting upon the suggestion contained in the report of January 29, 1915, the carriers on April 12 and 13 presented a proposed plan for the adjustment of rates. After fully considering the same the order of April 30, 1915, was entered. All of the above-mentioned orders are made parts of this answer, as above set out. This respondent further states that the carriers have filed tariffs under the orders of the commission, and the rates so made have been accepted by the carriers and by the public except the four cities named as petitioners herein. Respondent states that an annulment of the order would upset entirely the transcontinental westbound rate structure. Respondent states that in dealing with the problem it came to the conclusions announced in its orders after many years of consideration and study of conditions, and that any change of the order by inserting the four cities petitioners herein would make it necessary to readjust the rates to innumerable other cities

139 which have just as much right to ask the court to require that they be included as terminal points as the petitioners have.

Further answering, respondent states that by their petition, as appears by the allegation thereof and the prayer thereof, the petitioners are endeavoring to have this court make orders that this respondent did not make and to declare void the orders that were made because this respondent did not make different orders; and the petitioners are endeavoring to have this court in advance of any action by this respondent, Interstate Commerce Commission, determine the question of discrimination in rates to San Francisco, Stockton, Santa Clara, San Jose, and Sacramento; and petitioners are endeavoring to have this court decide what orders should be made by this respondent, Interstate Commerce Commission. The petitioners thereby are attempting to have the court usurp the functions delegated to this respondent, Interstate Commerce Commission, by the act to regulate commerce. This respondent alleges that the only matter before this court is the validity of the orders that were made, and not the validity or invalidity of orders that were not made and that this respondent refused to make.

Further answering, this respondent denies each and every allegation in said petition in so far as it has not been admitted, denied, or otherwise traversed.

This respondent denies:

1. Any fact or facts alleged in said petition or any part of the same which contradict or seek to contradict any fact or facts found by this respondent in its said reports and orders.

140 2. Any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by this respondent in said reports and orders.

3. Any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before this respondent.

4. Any conclusions of law alleged in said petition or any part of the same which are inconsistent with any conclusions of law held by this respondent in the said reports and orders, or any facts or inferences alleged in said petition, or any part of the same, which are inconsistent with the findings of this respondent in its said reports and orders, all of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all of the matters and things aforesaid as this respondent would be entitled to if the same were specifically pleaded or set forth by way of demurrer or motion to dismiss the complaint.

Wherefore, having fully answered, this respondent prays that the petition be dismissed at the costs of the petitioner, and for such other and further relief as may be appropriate in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOSEPH W. FOLK,
Chief Counsel.

141 CITY OF WASHINGTON,

District of Columbia, ss:

I, Edgar E. Clark, on oath, depose and say that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said commission; that I have read the foregoing answer and know the contents thereof, and that the same is true.

EDGAR E. CLARK.

Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 9th day of August, A. D. 1915.

ALFRED HOLMEAD,

Notary Public.

Endorsed: Filed August 13, 1915. Walter B. Maling, clerk.

142 In the District Court of the United States, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION, plaintiff,

vs.

No. 191, in Equity.

UNITED STATES ET AL., DEFENDANTS.

Stipulation extending time to answer.

It is hereby stipulated that the defendants, the Atchison, Topeka and Santa Fe Railway Company and the Chicago, Rock Island and Pacific Railway Company, may have ten days additional time from the 12th day of August, 1915, within which to answer the bill of complaint in the above-entitled action.

Dated San Francisco, August 11, 1915.

JNO. E. ALEXANDER,

Attorney for Plaintiff.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

143 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Motion to dismiss bill of complaint or petition.

Come now the respondents, the Atchison, Topeka & Santa Fe Railway Company, the Denver & Rio Grande Railroad Company, South-

ern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, by their solicitors, and move the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them.

Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby
144 sought and prayed for from or against these respondents, or any of them.

ALLAN P. MATTHEW,
E. W. CAMP,
C. W. DURBROW,

*Solicitors for Above-Named Respondents,
Flood Building, San Francisco, California.*

Dated at San Francisco, California, August 12th, 1915.

Service of the within motion, by receipt of a copy thereof, is hereby admitted this 12th day of August, 1915.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

145 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Motion to dismiss bill of complaint on petition.

Comes now the respondent, Chicago, Rock Island & Pacific Railway Company, by its solicitor, and moves the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondent.

Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby sought and prayed for from or against this respondent.

Dated at San Francisco, California, August 12, 1915.

E. W. CAMP,

Solicitor for above-named respondent.

Endorsed: Filed Aug. 17, 1915. Walter B. Maling, clerk.

146 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Order to show cause.

Upon the application of petitioners, and upon reading the petition filed in the above cause on July 10, 1915, and the amendment to said petition and the affidavits of G. J. Bradley, S. E. Semple, W. D. Wall, and the joint affidavit of said Bradley, Semple, and Wall, filed herewith, and good cause appearing therefor;

It is hereby ordered, adjudged, and decreed that the respondents above named be and appear before the above court, in the court room thereof, in the U. S. Post Office Building, in San Francisco, California, at the hour of 10.00 a. m. on the 13th day of August, 1915, then and there to show cause why the orders of the Interstate

Commerce Commission of January 29, 1915, and April 30, 147 1915, in fourth section applications Nos. 205, 342, 343, 344, 350, and 352, and the tariff filed by the rail carriers, respondents herein, pursuant to said orders, said tariff being designated as Supplement 16 to Trans-Continental Freight Bureau West-Bound Tariff No. 1-N, I. C. C., No. 996 of R. H. Countiss, should not be suspended and set aside and the enforcement, operation, and execution thereof be restrained and enjoined in so far as said orders

and said tariff allow or charge for the transportation of transcontinental westbound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater amount than is charged for the carriage of like freight to San Francisco and Oakland, and why an interlocutory injunction to such effect should not issue in the manner provided by law.

The application of petitioners will be based upon the petition filed in the above cause on the 10th day of July, 1915, the amendment thereto, and the above-mentioned affidavits filed herewith, and upon the applications, findings, and orders in said fourth section matters.

It is further ordered that said application for an interlocutory injunction shall be heard and determined by three judges, of whom one shall be a circuit judge; and such judges are hereby called to the assistance of the judge issuing this order to hear and determine said application at the time and place hereinbefore set forth.

It is further ordered that notice of said hearing be given to the respondents above named at least five (5) days prior to the date of said hearing.

Done in open court this 28th day of July, 1915.

(Sgd.)

WM. H. SAWTELLE,

Judge.

Endorsed: Filed July 28, 1915. Walter B. Maling, Clerk.

148 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Notice of motion to dismiss bill of complaint or petition.

To the petitioners above named and to John E. Alexander, their solicitor:

You and each of you will hereby please take notice that on Tuesday, the 17th day of August, 1915, in the court room of the above-entitled court, second division, in the United States Post Office Building in San Francisco, California, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, the respondents

below named will move the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them; and,

149 Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby sought and prayed for from or against the said respondents, or any of them.

Said motion will be based upon the papers, pleadings, record, and file herein and upon this notice of motion.

ALLAN P. MATTHEW,
E. W. CAMP,
C. W. DUBROW,

Solicitors for the Atchison, Topeka & Santa Fe Railway Company, the Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company.

Dated at San Francisco, California, August 12th, 1915.

Service of the within notice, by receipt of a copy thereof, is hereby admitted this 12th day of August, 1915.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

150 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Order setting place and date of hearing of motion to dismiss.

It appearing to this court that the respondents, The Atchison, Topeka & Santa Fe Railway Company; The Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Rail-

road Company; and Western Pacific Railway Company, have filed herein a motion to dismiss the bill of complaint or petition in the above-entitled cause, which said motion to dismiss is based on the following grounds, viz:

First, that the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them; and,

Second, that the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is
151 thereby sought and prayed for from or against the said respondents, or any of them;

Now, therefore, upon the application of said respondents and for good cause shown, it is hereby ordered, adjudged, and decreed that the motion of the said respondents for an order dismissing the bill of complaint or petition herein upon said grounds shall be heard and determined by the above-named court in the court room thereof, second division, in the United States Post Office Building in San Francisco, California, at the hour of 10 o'clock a. m., on the 17th day of August, 1915.

It is further ordered, that notice of said hearing be given to the petitioners herein at least five days prior to the date of said hearing.

Done in open court this 12th day of August, 1915.

M. T. DOOLING, *Judge.*

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

152 In the United States District Court, Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

Notice of motion.

To the respondents above named:

You and each of you will please take notice that petitioners above named will move the judges of the above court, in the court room

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thereof, in the U. S. post-office building, in San Francisco, California, at the hour of 10.00 a. m., or as soon as counsel can be heard thereafter, on the 13th day of August, 1915, for an order suspending and setting aside the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in fourth section applications Nos. 205, 342, 343, 344, 349, 350, and 352, and the tariff filed thereunder by the rail carriers, respondents herein, pursuant to said orders, said tariff being designated as Supplement 16 to Trans-Continental Freight

Bureau West-Bound Tariff No. 1-N, I. C. C. No. 996, of R. H. 153 Countiss, and restraining and enjoining the enforcement, operation, and execution thereof in so far as said orders and said tariff allow or charge for the transportation of transcontinental west-bound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater amount than is charged for the transportation of like freight to San Francisco and Oakland, and for an interlocutory injunction to such effect.

Said motion will be made upon the following grounds, to wit: That Sacramento, Stockton, San Jose, and Santa Clara are entitled to terminal rates because of the fact that the rail carriers, in competition with the water carriers, have reduced the rates on the carriage to said points of westbound transcontinental commodities from competitive points in eastern defined territory, and that there was no hearing and no changed conditions to justify an increase of rates; that the charging of higher rates to the four cities mentioned than are charged for the transportation of like commodities to San Francisco and Oakland is violative of the fourth section of the act to regulate commerce; that the increase of rates to the four cities mentioned is unjust and discriminatory as to them and gives an undue and an unlawful preference and advantage to San Francisco and Oakland; that the circumstances and conditions surrounding the four named cities are similar to those surrounding San Francisco and Oakland and the transportation of freight to them is under similar circumstances and conditions as the transportation of like freight to San Francisco and Oakland; that no evidence was introduced before the Interstate Commerce Commission showing that the rates which the four cities mentioned had heretofore enjoyed were not reasonable or showing changed conditions or justifying an increase of said rates; that neither the four cities, nor any of the commercial

bodies or organizations thereof, nor the petitioners herein, were 154 parties to any of the proceedings before the Interstate Commerce Commission wherein the aforesaid orders were made; that petitioners herein were denied the right by the Interstate Commerce Commission of appearing and showing their rights in the matter; that property was taken from petitioners without due process of law; that petitioners were denied the equal protection of the law; that the aforesaid orders and the tariff filed thereunder will cause petitioners irreparable damage and injury; and that said orders and the tariff filed thereunder are contrary to law.

Said motion will be made and based upon the petition of petitioners heretofore filed herein on July 10, 1915, and upon the amendment to said petition; the joint affidavit of G. J. Bradley, S. E. Sample, and W. D. Wall; the affidavits of G. J. Bradley, of S. E. Semple, and of W. D. Wall; and the order of the judge of the above court to show cause, together with this notice, copies of which are herewith served upon you, and upon the applications, findings, and orders in said fourth section matters.

Dated July 28th, 1915.

JOHN E. ALEXANDER,
Solicitor for petitioners.

Endorsed: Filed Sep. 17, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

155 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; United States of America; Interstate Commerce Commissioner; Atchison, Topoka & Santa Fe Railway Company; Denver and Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

United States marshal's return of service on order to show cause.

I, J. B. Holohan, United States marshal in and for the Northern District of California, hereby certify, that at San Francisco, California, on July 28th, 1915, I received from John E. Alexander, plaintiff's attorney, two copies of order to show cause, signed by Wm. H. Sawtelle, U. S. district judge, and notice of motion, signed by said Alexander as solicitor for petitioners, both of them being dated San Francisco, California, July 28th, 1915; and thereafter—to wit, at San Francisco, California, on July 31, 1915—I handed to and left one of said copies of order to show cause and notice of motion, together with copy of amendment to petition, copy of points and authorities for interlocutory injunction, copy of affidavit of G. J. Bradley, copy of affidavit of S. E. Semple, copy of affidavit of
156 W. D. Wall, and copy of affidavit of Bradley, Semple & Wall, jointly, with Warren Olney, one of the receivers appointed by the United States District Court in and for the Northern Dis-

trict of California, for the Western Pacific Railroad Company; and the other copy of order to show cause and notice of motion, together with copy of amendment to petition, copy of points and authorities for interlocutory decree, copy of affidavit of G. J. Bradley, copy of affidavit of S. E. Semple, copy of affidavit of W. D. Wall, and copy of affidavit of Bradley, Semple & Wall, jointly, with C. W. Durbrow, who is the attorney for the Southern Pacific Company at San Francisco, California, on August 2, 1915.

J. B. HOLOHAN,
United States Marshal.
By I. W. GROVER,
Office Deputy.

Dated San Francisco, Cal., August 2nd, 1915.

157 This is to certify that I executed service upon the Chicago, Rock Island, and Pacific Railway Company, by delivering to Jacob M. Dickenson, receiver, one copy of each of the following papers: An order to show cause and notice of motion; amendments to petition; points and authorities for interlocutory injunction; affidavit of G. J. Bradley, affidavit of S. E. Semple; affidavit of W. D. Wall; and affidavit of Bradley, Semple, and Wall, jointly. Done at Chicago, Illinois, this 5th day of August, A. D. 1915. Above papers being served in re Merchants' and Manufacturers' Traffic Association of Sacramento et al. vs. United States of America et al.

Marshal's fees: 1 service, 2.00; 1 mile, .06—2.06.

JOHN J. BRADLEY,
U. S. Marshal.
By JOHN S. ROBERTS,
Deputy.

Subscribed and sworn to before me at Chicago, Illinois, this 5th day of August, A. D. 1915.

[SEAL.]

LEWIS F. MASON,
U. S. Commissioner.

158 United States of America, in the District Court of the United States for the Southern District of California, Southern Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC ASSO-
ciation of Sacramento et al., plaintiff,

vs.

THE UNITED STATES OF AMERICA ET AL., DE-
fendant.

} Affidavit of service.

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Fenton G. Thompson, being duly sworn, on oath deposes and says:
I am a citizen of the United States over the age of twenty-one

years and a resident of the city of Los Angeles, county of Los Angeles, State of California.

That at the request of the attorney for the petitioner I served on the 2d day of August, 1915, an order to show cause and notice of motion, together with amendments to petition, points and authorities for interlocutory injunction, affidavit of G. J. Bradley, affidavit of S. E. Semple, affidavit of W. D. Wall, and affidavit of Bradley, Semple, and Wall, jointly, upon the Atchison, Topeka, and Santa Fe Railway, by leaving with E. N. Camp, agent of said company.

FENTON G. THOMPSON,

Subscribed and sworn to before me this 4th day of August, 1915.

WM. M. VAN DYKE,
Clerk, U. S. District Court,
Southern District of California.
By CHAS. N. WILLIAMS,
Deputy.

[SEAL.]

159 UNITED STATES OF AMERICA,
District of Colorado, ss:

I hereby certify and return that I did, on the 3rd day of August, A. D. 1915, at Denver, in the district of Colorado, duly serve an order to show cause, issued out of the United States District Court for the Northern District of California on the 28th day of July, A. D. 1915, wherein the Merchants and Manufacturers Traffic Association of Sacramento et al. are plaintiffs and the United States of America et al. are defendants, upon the Denver and Rio Grande Railroad Company, by delivering a copy of said order, together with a copy of the notice of motion, amendments to petition, points and authorities for interlocutory injunctions, affidavits of G. J. Bradley, S. E. Semple, and W. D. Wall, and joint affidavit of G. J. Bradley, S. E. Semple, and W. D. Wall attached to said order, to J. B. Andrews, assistant secretary of said company.

S. J. BURRIS,
United States Marshal,
By T. J. McCLUER,
Deputy.

Fees & costs, \$2.00.

Subscribed and sworn to before me this 3rd day of August, A. D. 1915.

[SEAL.]

CHARLES W. BISHOP, Clerk,
By ALBERT TREGO,
Deputy Clerk.

160 Department of Justice. Marshal of the United States, District of Columbia.

WASHINGTON, D. C., August 4, 1915.

MERCHANTS & MANUFACTURERS TRAFFIC ASSOCIATION OF
Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

This is to certify that in the above-entitled case personal service of the following papers, viz—

1. Order to show cause and notice of motion,
2. Amendments to petition,
3. Points and authorities for interlocutory injunction,
4. Affidavit of G. J. Bradley,
5. Affidavit of S. E. Sample,
6. Affidavit of W. D. Wall,
7. Affidavit of Bradley, Sample, and Wall jointly—

was made this 4th day of August, 1915, upon the United States by personal service on Thomas W. Gregory, Attorney General of the United States, and upon the Interstate Commerce Commission by personal service on George B. McGinty, secretary to said commission.

MAURICE SPLAIN,
United States Marshal, District of Columbia.

161 MERCHANTS AND MANUFACTURERS TRAFFIC
Association of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

I certify that I received on the 2nd day of August, 1915, in the case Merchants and Manufacturers Traffic Association of Sacramento et al. vs. United States of America et al., certified copies of certain papers, as follows, to wit: An order to show cause and notice of motion; amendment to petition; points and authorities for interlocutory injunction; affidavit of G. J. Bradley; affidavit of S. E. Sample; affidavit of W. D. Wall; joint affidavit of G. J. Bradley, S. E. Sample, and W. D. Wall; each and all of which I served at Salt Lake City, in the district of Utah, on the 3rd day of August, 1915, upon the Union Pacific Railroad Company, by delivering the said copies to Joseph F. Smith, a director for the said Union Pacific Railroad Company, it having no officer of higher rank within the district of Utah.

AQUILA NEBEKER,
United States Marshal,
By L. H. SMYTH,
Chief Deputy.

OPINION No. 1365.

BEFORE THE
Interstate Commerce Commission.

No. 1665.

RAILROAD COMMISSION OF NEVADA

v.

SOUTHERN PACIFIC COMPANY ET AL.

Decided June 6, 1910.

REPORT OF THE COMMISSION.

No. 1665.
RAILROAD COMMISSION OF NEVADA
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 7, 1909. Decided June 6, 1910.

Class rates from points in eastern defined territory to points in Nevada found unreasonable; reasonable rates prescribed for the future.

H. F. Bartine and R. C. Stoddard for complainant.

F. O. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company and Nevada & California Railroad Company.

Seth Mann for Traffic Bureau of the Merchants' Exchange of San Francisco, intervener.

Edward G. Kuster and Joseph P. Loeb for Associated Jobbers of Los Angeles, intervener.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The highest main-line rates to be found in the United States are those from eastern points to stations in Nevada. For carrying a carload of first class traffic containing 20,000 pounds from Omaha to Reno the Union Pacific-Southern Pacific line charges \$858. If a like carload is carried 154 miles further, to Sacramento, the charge is but \$600. The first class rate to the more distant point, Sacramento, is \$3 per 100 pounds, and to the nearer point, Reno, \$4.29 per 100 pounds. If a like carload of freight originates at Denver, 500 miles west of Omaha, the same rates to Reno and Sacramento apply; and if the freight originates at Boston, 1,700 miles east of Omaha, the rates are the same. This interesting rate condition arises out of two simple facts: (1) The whole of the United States from Colorado common points to the Atlantic seaboard, barring a few of the southeastern states, is one wide group or zone from which practically uniform rates to Pacific coast water points are made, and (2) the rates to Reno are based upon these blanket rates to coast cities, and amount

to the sum of the rates to the coast plus the local rates back to point of destination.

This great zone, extending from the Rocky Mountains to the Atlantic, a distance of over 2,000 miles, from which practically uniform rates are made to Pacific coast terminal cities, is probably without parallel in the railroad world, excepting for a similar eastward blanket extended to Pacific coast producing points. The zone in which the same rates apply on California citrus fruits, for instance, extends from Salt Lake City on the west to Portland, Me. It is manifest that the transcontinental railroads have made a near approximation to the postage-stamp system of rate making. Their policy has been to give to all eastern producing markets an opportunity to sell to the terminal cities upon a parity as to transportation charges and to give to Pacific coast producing points access to all eastern markets upon a like basis. To the great basin lying between the Rocky Mountains and the Sierra Nevadas the carriers have in a limited degree extended this same policy by making rates into Nevada based on the coast cities, and thus, the carriers say, they give to this territory the advantage of its proximity to the Pacific seaboard; that the rates to the latter are made low because of water competition between the Atlantic and Pacific ports—lower than would be justified were Sacramento and San Francisco not upon the water—and that Nevada rates would be still higher but for its nearness to the Pacific coast.

The state of Nevada, through its railroad commission, now comes asking that Nevada points be given the same rates as are now given to Pacific coast terminals, urging that these coast rates are not unreasonably low in themselves, and are not the product of any real water competition.

The complaint originally filed in this case made the Southern Pacific the sole defendant; the reasonableness of the rates from the east to Nevada were not attacked, excepting in so far as they are based on the rates to further western points, and include a back-haul charge. As the complaint then stood the petition was that this Commission should hold it to be unreasonable for the Southern Pacific, delivering freight at Reno and other points in Nevada, to charge for a back haul which is not in fact given, and that we should adjudge the rates to Sacramento to be reasonable as applied to the intermediate points. Later the complaint was amended by adding carriers east of Ogden forming a single through route from the Atlantic coast. So that the petition of Nevada now is that from all points upon this through route reasonable rates shall be fixed which shall not exceed those now applicable on shipments from such points to the more distant coast terminals. It is suggested by the complainant that we bring in other carriers as defendants, so that the entire

eastern territory may be covered by our order. This we think unnecessary, assuming, as we do, that the conclusions here reached as to a through route from the east to the west will be adopted and established by other lines similarly situated.

CONSTRUCTION OF NEVADA RATES.

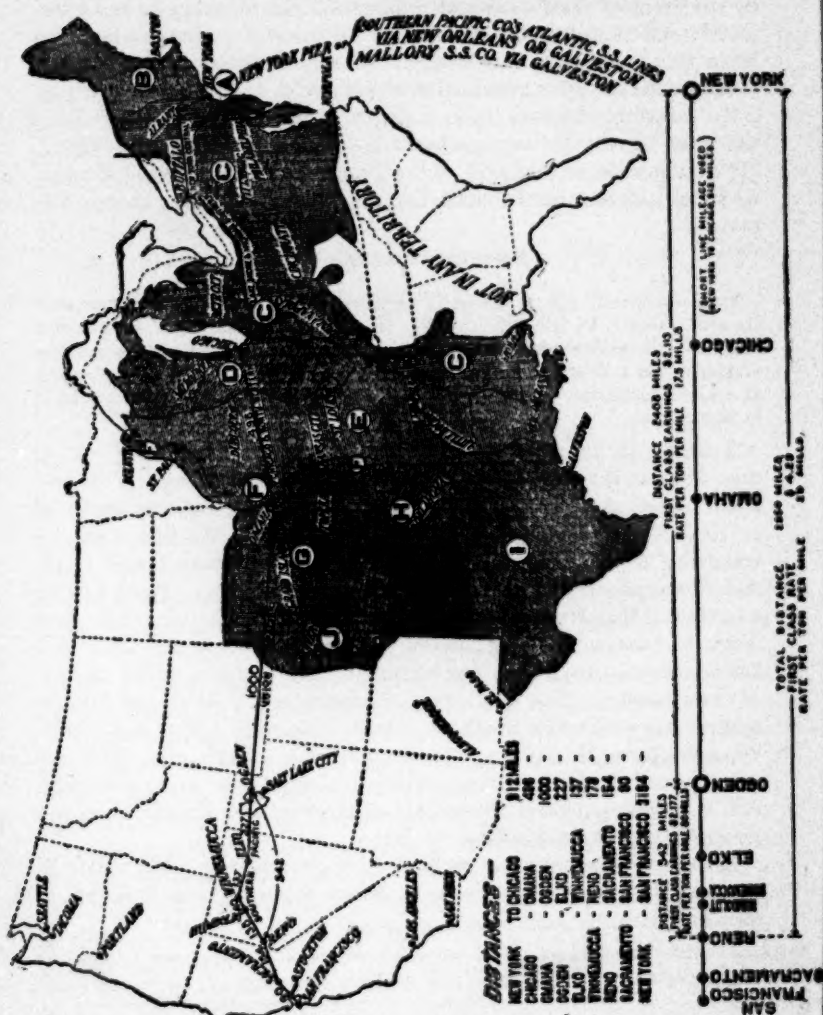
To reach a clear understanding of the basis upon which Nevada rates in general are now fixed, it is necessary to bear primarily in mind the fact before referred to, that the carriers of the country have united in establishing a zone 2,000 miles in width from which rates are practically uniform to what are known as "coast terminals." There are 152 of these coast terminals, 97 of which are in California. They are points more or less arbitrarily established by the carriers, but which are either upon inlets from the ocean or rivers running to such inlets, or are but slightly removed from such water points. The most prominent coast terminals are Seattle, Tacoma, Portland, Sacramento, San Jose, Stockton, Oakland, San Francisco, Los Angeles, and San Diego. To these coast terminals are extended what are known as "terminal rates" on westbound transcontinental traffic. These rates apply either from all of eastern defined territory or from separate groups therein. The shaded portion of the accompanying map indicates eastern defined territory and the groups into which it is divided. These groups are lettered from A to J. A is limited to New York City piers, and has to do only with shipments by steamship via Gulf ports; B covers New England territory; C, New York territory and the middle states, with New York City as the principal point; D, Chicago and adjacent territory; E, the Mississippi River, with St. Louis as the principal city; F, the Missouri River; G, Kansas; H, Oklahoma; I, Texas; and J, Colorado, with Denver as its central point.

Class rates.—Coming, then, to the construction of the Nevada class rates, we find that the carriers have employed three methods of construction during the past two years. Prior to January 1, 1909, there existed a body of what were known as intermediate class rates to Reno from certain designated eastern points. These rates were, on first class—

From Chicago-Milwaukee common points.....	\$3.90
From Mississippi River common points.....	3.70
From Missouri River common points.....	3.50
From Colorado common points.....	3.00

An alternative clause gave Reno the right to the combination rate based on Sacramento whenever that should be lower. This indefinite method of stating rates the Commission condemned in a general ruling. The tariffs were then changed so as to cancel the alternative

clause and the intermediate class rates and thus to make all Nevada rates base on Sacramento. This was the situation when the case was heard. Later, however, in June of last year, a third plan was



adopted, and that now obtains, viz, to divide Nevada into two zones with Humboldt as the dividing point. Points west of Humboldt take the Sacramento combination. Points east of Humboldt take generally the Ogden combination. It is unnecessary herein to trace

the history and the effect of these various changes in the method of rate basing. We shall deal with the rates to all Nevada points as joint rates. And inasmuch as rates on all ten classes were quoted by the carriers' tariffs from all eastern defined territory to coast terminals and therefore by combination to interior points, at the time when this proceeding was brought, we shall consider that our jurisdiction extends to the installation of such rates to all of such territory.

To ascertain the rate upon a shipment from New York to Reno one looks in vain for any one tariff in which such rate is to be found. By examination of the tariff of the Transcontinental Freight Bureau, to which the Southern Pacific Company is a party, this note is discovered:

Rates to intermediate points.

When no specific rate is named to an intermediate point shown in Transcontinental Freight Bureau Circular No. 16-C (I. C. C. No. 884), supplements thereto, or reissues thereof, rate to such an intermediate point will be made by adding to the rate shown to the point designated herein as "Terminal," which is nearest destination of shipment, the local rate from nearest terminal point to destination.

Turning to Transcontinental Freight Bureau Circular No. 16-C (the issue at the date at which this complaint was brought), we find Reno named as an intermediate point, and that the nearest terminal to Reno is Sacramento, 154 miles west of Reno. We find, then, by returning to the Transcontinental Freight Bureau west bound tariff, the rate applicable upon the shipment to Sacramento. Then, having ascertained this from a tariff to which all of the carriers from New York to Sacramento are parties, we must next find the local rate from Sacramento to the destination of the freight, which is east of Sacramento. This local rate, Sacramento to Reno, we find in a tariff to which the Southern Pacific Company alone is a party. Thus we have, through a maze of tariffs, at length discovered the rate from New York to Reno, which is made up of a joint through rate to Sacramento and a local rate of the Southern Pacific Company alone from Sacramento back to Reno.

The all-rail class rates, in cents, per 100 pounds from eastern defined territory to coast terminals were, when this case was brought, as follows:

	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Groups B, C, D, E, F, G, H, and I.....	\$3.00	\$2.60	\$2.20	\$1.90	\$1.65	\$1.60	\$1.25	\$1.00	\$1.00	\$0.95
Group J	2.00	2.60	2.00	1.75	1.60	1.40	1.20	.95	.85	.80

An examination of present tariffs will show that from New England and New York territories (Groups B and C) no class rates below fourth class are now extended. Prior to January 1, 1909, however, and at the time this complaint was brought, rates were given for the full 10 classes from these groups, and such rates upon the \$3 scale are now given to coast terminals from Group A, the freight being carried from the New York City piers to New Orleans and Galveston by ocean carriers and thence by rail. It will also be seen that from Group J slightly lower rates are made on all classes below second class than are made from other groups. With these exceptions, however, the rates are uniform throughout the whole eastern defined territory as to classified freight.

The local rates on classes from Sacramento to Reno are as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	129	112	102	87	78	78	24	23.5	25.5	25.5

The result of the combination on Sacramento is therefore to produce the following rates to Reno:

From Groups B, C, D, E, F, G, H, and I:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	322	277	243	238	159	133½	125½	120½

From Group J:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	302	262	238	218	154	128½	110½	105½

Rates to points east of Humboldt, such as Winnemucca and Elko, under the present method of making rates on the Ogden combination, vary as the rate from point of origin to Ogden.

The effect of this change in method of making rates may be illustrated briefly by the statement that the first class rate to Reno from Chicago prior to January 1, 1909, was \$3.90, whereas it is now \$4.29; from Missouri River \$3.50, and now \$4.29. To Elko, on the other hand, the first class rate from Chicago is now \$4.27, as against a previous rate of \$4.72½, when the rate based on Sacramento.

For many years the class rates to interior points, such as Reno, were no higher than to the terminals. On April 11, 1893, the practice of maintaining lower terminal rates was instituted. The first line of figures in the table below shows the Reno rates when this case was brought; the second line, the rates in 1892; and the third line, the difference, or the amount by which the rates have been increased.

To Reno from—	Class.										
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	
Missouri River common points	429	373	322	277	243	238	156	133	125	120	
1892 rates	850	800	260	200	175	175	155	125	110	100	
Difference	79	73	73	77	68	63	4	8	10	20	
Mississippi River common points	429	373	322	277	243	238	156	133	125	120	
1892 rates	370	320	260	205	180	182	163	130	115	105	
Difference	89	88	82	72	63	56	—	3	10	15	
Chicago common points	429	373	322	277	243	238	156	133	125	120	
1892 rates	380	340	270	215	185	190	170	135	120	110	
Difference	39	33	52	62	58	48	—	—	5	10	

Commodity rates.—While there are many hundred commodity rates extended to coast terminals, there are but few given to intermediate points. On the following articles the commodity rates are the same to Utah and Nevada points as to Pacific coast terminals from Groups D, E, F, G, H, I, and J of eastern defined territory, which include all points from Chicago west:

Apples; bananas; beer, in wood; bones; broom corn; butter, but-terine, oleomargarine, eggs, cheese, and dressed poultry; cars, street; barley, corn, rye, oats, and speltz, c. l. and l. c. l.; bran and shorts, c. l. and l. c. l.; brewer's grits, brewer's meal, corn meal, corn chop or chop feed, chopped corn, cracked corn, and hominy; buckwheat, c. l. and l. c. l.; wheat, c. l. and l. c. l.; cooperage, cranberries; fertilizers, n. o. s.; household goods, c. l. and l. c. l.; live stock; machinery, min-ing; mineral-water bottles, returning; oil cake and oil-cake meal; onions; onion sets, l. c. l.; packing-house products; pineapples; plaster, building; poultry, alive; railway equipment; and staves and headings.

As to all but two or three of these commodities, the rates are the same to Reno as to Sacramento from Chicago. That is to say, the blanket rate made from all eastern defined territory to coast terminals on these commodities is applied from Chicago to Reno. There are a few other commodities upon which commodity rates are given to Reno which are somewhat higher than the rates from Chicago to Sacra-mento, viz, automobiles, buggies, carriages, wagons, vehicles, and coal, coke, and guano from certain far western points. From an examina-tion of the tariffs it appears that the transcontinental commodity rates—rates from eastern defined territory to the coast terminals—are at the present time higher than they were ten years ago by a very con-siderable percentage and this regardless of the fact that the base of supplies has been constantly moving westward, thereby narrowing the distance between point of production and consumption.

VOLUME OF NEVADA TRAFFIC.

Nevada is colloquially known as the "Sage Brush State," and from the car window it presents the spectacle of an almost uninterrupted waste. Railroad men speak of it as a "bridge"—unproductive territory across which freight must be carried to reach points of consumption. The figures of the Southern Pacific demonstrate, however, that while Nevada traffic may at one time have been negligible such is no longer the case.

Some time before this proceeding was brought the Southern Pacific Company, which is the lessee of the Central Pacific running from Ogden west into California, brought suit in the United States circuit court for the district of Nevada attacking certain rate schedules upon state traffic established by the state commission. In support of its case the Southern Pacific Company filed an affidavit made by Mr. C. B. Seger, auditor of the Southern Pacific Company, showing the earnings of the Central Pacific on business wholly within the state, on business passing through the state, on business originating in and passing out of the state, and on business originating outside and having its destination in the state, for the fiscal year ending June 30, 1907. Mr. Seger said by way of explaining his figures:

The freight earnings accruing to and made by said Southern Pacific Company in Nevada, being the revenue itself, without reference to its disposition under any lease, agreement, or otherwise, are derived for the said fiscal year 1907 from through and local business, understanding by local business such as is strictly intrastate in character, picked up and laid down within the limits of the state of Nevada, and understanding by through business such as is interstate in character. Further differentiating, said interstate business consists, first, of business originating outside and coming into the state; second, of business originating in and passing out of the state; and, third, of business originating outside the state, having destination beyond the state, and, in relation to the state itself, simply passing through the state. The freight earnings for said fiscal year, and pertaining to the said business as above classified, are set forth under the appropriate heads, and are, in fact, as follows:

	Revenue.	Percentage of total.
Intrastate.....	\$150,791.40	0.02
Originating outside and coming into the state.....	1,083,027.09	.20
Originating in and passing out of the state.....	831,002.96	.10
Passing through the state.....	2,676,282.05	.22
	5,676,282.28	.68
Sum total.....	8,252,564.28	1.00

Surprising as these figures are they apparently do not fully set forth the extent of Nevada business at this time, as is shown by an exhibit filed by the Southern Pacific Company in the present case,

giving the business west of Ogden for the single month of February, 1909, which may be epitomized thus:

	Revenue.	Percent- age of total.	Tonnage.	Percent- age of total.
Intrastate.....	\$29,001.00	0.08	4,715	0.04
Into and out of Nevada and Utah west of Ogden.....	\$14,579.65	.38	64,867	.50
	\$43,580.65	.41	69,582	.54
Passing through the state	495,128.37	.59	60,271	.46
Total for month of February, 1909.....	\$538,509.02	1.00	130,453	1.00

Another most interesting showing is made by the Seger affidavit as to passenger business on the Southern Pacific in the state of Nevada for the year 1907, the figures given being these:

	Revenue.	Percent- age.
Intrastate.....	\$286,235.65	10
Originating outside and coming into the state	357,511.55	9
Originating in and passing out of the state.....	267,582.35	13
		— 22
Passing through the state.....	1,963,915.33	— 32
		66
Sum total	2,574,245.33	100

The statement for the month of February, 1909, referred to above, sets forth very clearly not only the volume of business going into and out of Nevada and the earnings of the Southern Pacific thereon; but also gives a specific analysis of the sources of the traffic, showing the volume which comes into Nevada from the east and that which comes from California. Under "Question 2" below will be found a statement of the freight received at Nevada and Utah points from points west of Calvada, which is a station directly on the California-Nevada state line. This table, however, should not mislead; a considerable percentage of the traffic from California is traffic of eastern origin reshipped from California to Nevada. The table also includes coal and other commodities of very large tonnage (approximately one-half of the total in weight) coming from points west of eastern defined territory.

Territorial movement.	Total.	
	Tons.	Southern Pacific earnings.
Gross total tonnage and earnings of the Southern Pacific Co. for the month of February, 1909.....	913, 802	\$3, 432, 529. 00
Question No. 1.		
Freight via Ogden to California.....	37, 386	\$30, 230. 56
Freight via Ogden from California.....	22, 385	174, 907. 92
	60, 271	495, 128. 37
Question No. 2.		
Freight via Ogden to points in Nevada and Utah.....	17, 485	\$6, 394. 88
Freight received at Nevada and Utah points from points west of Calvada....	16, 823	144, 803. 00
Freight via Ogden from points in Nevada and Utah.....	18, 381	\$3, 462. 77
Freight forwarded from points in Nevada and Utah to points west of Calvada....	11, 678	69, 667. 00
	64, 367	\$14, 579. 65
Question No. 3A.		
Freight received in California, San Francisco and north, from all points in California, including interchange with connecting lines in California.....	139, 827	\$65, 168. 00
Question No. 3B.		
Freight picked up and laid down in Nevada and Utah and freight moving between Nevada and Utah—		
Nevada to Nevada.....	4, 046	\$1, 839. 00
Utah to Utah.....	144	948. 00
Utah to Nevada.....	499	\$, 122. 00
Nevada to Utah.....	26	1, 092. 00
	4, 715	\$9, 001. 00

There was a time, doubtless, when Nevada traffic, save to the mines on its westernmost border, was but trifling. At present, however, it has a traffic, both freight and passenger, which is far too considerable to be overlooked under the rule *de minimis*. And it is to be remembered that the figures given apply to but one road, whereas a second is in operation across the state to the south, and a third is beginning operations on the north.

SOURCES OF EASTERN TRAFFIC.

It is interesting in this connection to regard the point of origin of this eastern freight. The railroad commission of Nevada had access to the billing of all shipments reaching Reno, and from these compiled a series of statements which appear to show that the great body of Nevada traffic which comes directly from the east via Ogden originates west of the Indiana-Illinois state line.

From one exhibit it appears that of the 1,063,687 pounds of less-than-carload shipments originating in eastern defined territory and delivered at Reno during the months of January, February, March, and April, 1908, only 10 per cent originated at the Atlantic coast cities of New York, Boston, and Philadelphia, and only 25 per cent in Connecticut, District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia. This exhibit

further shows that on the traffic moved the charges were \$32,719.30; that if terminal rates had been applied charges would have been \$21,956.24; and that the difference is \$10,748.07. In other words, the charges on these shipments to Reno were 48.3 per cent higher than would have been the charges on the same shipments had they been carried over the mountains to Sacramento.

Another exhibit shows that of 21,000,000 pounds of carload freight, earning \$278,000, moved from eastern defined territory into Reno, 9,500,000 pounds, earning \$120,000, moved in at rates no higher than terminals. It further shows that only 4,500,000 pounds of the 21,000,000 originated east of Chicago. This exhibit shows, aside from the products carried to Reno at terminal rates, that the charges were, for the year 1908, \$157,824.94; that the terminal charge would have been \$99,679.90; and the difference, \$58,524.40. In other words, the charges on carload shipments to Reno were 59 per cent higher than the charges on the same shipments would have been had they been carried to Sacramento.

Commissioner Thurtell estimated from the figures at his hand that the total receipts under present rates upon business brought into Reno via Ogden for the year 1908 amounted to \$454,343.69 and under terminal rates the revenue would have been \$363,865.23, a reduction of \$90,478.46. The statement also shows that the revenue to the Southern Pacific from this business was \$268,516.40 and would have been under terminal rates \$178,037.94, a reduction of \$90,478.46, or about 33 per cent. Expressed in revenue the Southern Pacific on the haul from Ogden to Reno earned \$11.51 per ton, while if terminal rates had been charged its earnings would have been \$7.63 per ton.

On the whole, the figures given in this case, which are the most authoritative thus far presented to the Commission with reference to the sources of westbound transcontinental traffic, indicate that less than 25 per cent of the traffic into Reno from the east originates east of Chicago, while 75 per cent originates between Chicago and Denver. In other words, the needs of the people on the west coast may be and are in great part supplied from sources nearer home than the Atlantic seaboard.

The manufacturing center of the country has moved westward and rates from the Atlantic seaboard that were once necessary are now almost unused. It may be historically the fact, as the carriers assert, that the transcontinental blanket rates given to the Pacific coast cities were put in to meet water competition from the Atlantic coast points, and that these rates were extended westward from the Atlantic as matter of grace to western manufacturers and producers; to-day, however, it might well be said that this blanket is extended not westward, but eastward, so as to give the eastern manufacturer or jobber some opportunity to reach the far western markets.

WATER COMPETITION.

As we have seen, the rates are higher on almost all commodities from eastern producing points to Reno than on these same commodities to Sacramento, the more distant point. Without explanation this constitutes a violation of the long-and-short-haul clause of the act. The carriers justify the lower rates to the more distant point upon the ground of water competition. They say that the rates charged to Reno and other Nevada cities are reasonable in themselves measured by the cost of the service to the carrier or the value of the service to the shipper, and that rates to the coast cities measured by these standards are too low to be considered reasonable and would not be in effect but for the force of water competition. The Nevada commission, on the other hand, contends that while some commerce does move from the Atlantic seaboard by water, the volume is so small that it is not influential in determining the present rate to the coast terminals; that the coast rate itself is reasonable, and therefore that the application of a higher rate to an intermediate point can not be justified. The making of higher intermediate rates, they strongly urge, is a matter of railway policy and not of railway necessity, in that the railways wish to develop the coast cities as jobbing centers to the exclusion of interior points; that the revenues of the carriers would not be seriously impaired were this policy abrogated and as low rates given to the intermountain country as are now extended to the coast cities.

It is no reflection upon the traffic manager of a railroad to say that he bases his rates upon some line of policy. He deals directly, and in most cases exclusively, with the producer or the jobber. His concern is to keep these patrons satisfied and at the same time bring to his railroad the greatest possible revenue. This is what he means by saying that he charges what the traffic will bear. He regards as reasonable whatever rate will make for the best interest of his road, and in determining this he adopts a line of policy which affects either favorably or unfavorably the industrial growth of the communities which the carrier serves. The restrictions of the act to regulate commerce are governmental limitations placed upon the unlimited and arbitrary discretion of traffic officials. While the latter may adopt policies which they regard as most favorable to their roads, such policies must be restricted by the inhibitions of the law which this Commission must enforce. The policy of making Reno rates base upon those extended to the more distant point may not be justified upon the ground that Reno traffic will bear that imposition, but may be justified by conditions obtaining at the more distant point which the carrier may meet without offense to any provision of the act.

And this brings directly to our consideration the question of water competition at Sacramento and other coast terminals. It is, of course, a physical fact that commerce may be carried by water from the eastern seaboard to the Pacific coast. It is admitted by all, and substantiated by the evidence in this case, that some commerce does actually so move. An estimate has been made by complainant that approximately 3,000,000 tons of transcontinental traffic reaches the coast terminals during each year by rail, while the highest figure given as the volume of traffic reaching those points by water from the eastern seaboard is under 10 per cent of the rail movement. The fact, however, that it moves in large or small quantities does not of itself sustain the contention that the present rates from eastern defined territory to coast terminals are so low as not to make a reasonable return to the carrier for the service performed. A movement of traffic may be affected by water competition at a more distant point and yet a rate made up of the combination of the rate by water plus the rate back be unreasonable and unjust. Nevada, Utah, Arizona, and Idaho are nearer to the Pacific coast than to the Atlantic, but this does not of itself justify charging them overland rail rates which will give them none of the advantages arising out of their shorter distance to an eastern base of supplies. Nor does it follow that a rate to a point on the seaboard is lower than would be justified if that point were not so situated. In short, it is not sufficient to state that the terminal points are situated on the water to excuse the imposition of higher rates at intermediate points.

There has been little difficulty experienced from time to time by the rail carriers in raising rates to the Pacific coast; the only live water competitor on the Pacific to-day is a line which bases its rates on the rail tariffs, and the rates of both the rail and the water lines change simultaneously. Ways can be found, and have been found, by which the presence of the ocean as a controlling, or even greatly meddlesome, factor in the fixing of railroad rates can be nullified. There is no doubt but that rail rates have been influenced at times to all the Pacific ports by water carriers, and of course there is the possibility that at any time this water competition may become seriously aggressive and potent. The United States is not a maritime nation at present, and her great coast line on the Pacific side is served in great part by such water carriers as the railroads permit to live.

While, therefore, physical conditions at the coast are dissimilar to those at interior points the rates to the coast are not necessarily less than in fairness the traffic should carry. The water carriers between the Atlantic and the Pacific coasts at present charge rates from 25 to 40 per cent less than their railroad rivals. To get this business the water carrier at the eastern port reaches inland and absorbs a rail

rate of 20 cents upon commodities which carry more than a 50-cent water rate to the Pacific coast. The American-Hawaiian Steamship Company then transports the freight by water to the Tehuantepec road, where it is transshipped across the Isthmus, and being loaded again is carried to a Pacific coast port and there reshipped either by rail or water to certain designated points of destination inland from the port. In such a movement there is involved a rail haul of 400 or 500 miles, at least six, and possibly more, separate handlings of each parcel of freight, and a haul by water of fully 5,000 miles. Freight moving via Panama is subject to even heavier conditions. It is insisted by the Nevada commission that water competition of this character is not sufficiently aggressive or formidable to compel the railroads to make any other rates to the coast terminals than those which from reasons of policy they are at present making. The suggestion is not without pertinence that if four different transportation services, three by rail and two by water, involving at least six handlings of the freight and a total haul of 5,500 miles, can be furnished profitably at from 60 to 75 per cent of the rail rate, the compensation to the rail carrier for an all-rail haul of 2,500 miles, with no handling and but two terminal charges, should produce ample revenue to the rail carrier.

There are many interesting developments in this and other trans-continental cases touching this matter of competition by water. For instance, the lowest rate does not in all cases apply to and from the seacoast points. There are many commodities upon which the rates from Chicago and Kansas City to Sacramento and San Francisco are less than they are from New York. And yet it is said to be the competition from New York that produces the low rate. In no case is the rail rate from New York less than is the rate from other portions of eastern defined territory, while of course in all cases New York is nearer the source of the competing force, the ocean. This is accounted for by the carriers on the ground that by taking the same, or a lower, rate from the interior points to the coast terminals the rail carrier avoids the longer rail haul, the points of origin and destination being nearer together. This is an application of what the carriers term "market competition," but it is not a strong argument to sustain the theory of water competition.

As usually applied by carriers market competition results in the hauling of commodities produced at places distant from the point of consumption to compete with the same commodities from points nearer to the point of consumption. In this case, however, market competition is said to be the controlling factor which justifies a rate from an interior point less distant from destination. Thus we have a \$3 rate from New York to Sacramento to meet water competition, and a \$3 rate from Kansas City to meet market com-

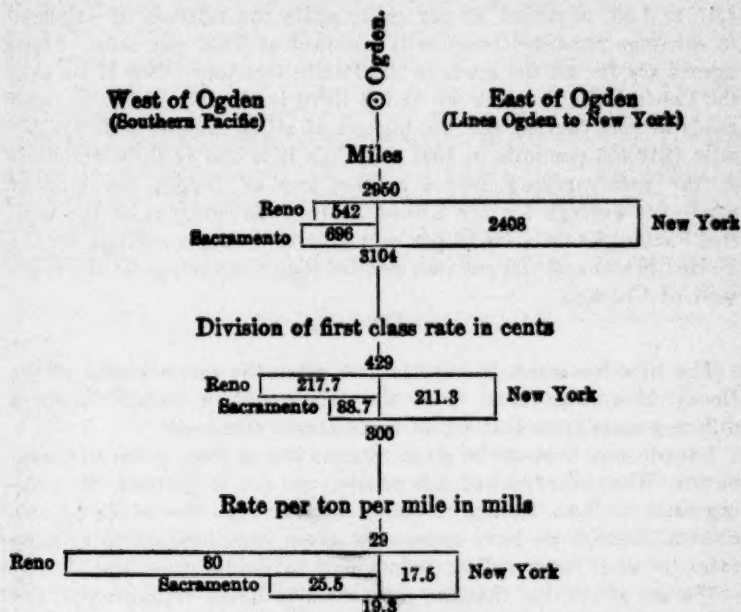
petition. We also have a \$4.29 rate from Kansas City and from New York, to Reno, as a reasonable rate because of water competition from New York to Sacramento.

We do not regard the divisions of rates as in any wise conclusive as to the reasonableness of rates between certain points, but such divisions are sometimes of significance. In the present case we find that if 100 pounds of freight is shipped from Boston, or New York, or Chicago, or St. Louis, or Omaha to Sacramento on the \$3 rate, and another 100 pounds of the same kind of freight is shipped from the same points to Reno on the same day, the carriers east of Ogden receive precisely the same earnings upon both shipments; but the Southern Pacific, west of Ogden, receives far more upon the Reno shipment than on the Sacramento shipment. This is illustrated in the following table:

From—	To—	Rate.	Earnings east of Ogden.	Earnings of Southern Pacific Company (west of Ogden).
		Cents.	Cents.	Cents.
Group B, Boston.....	Sacramento.....	300	211.3	22.7
	Reno.....	429	211.3	217.7
Group C, New York.....	Sacramento.....	300	211.3	22.7
	Reno.....	429	211.3	217.7
Group D, including Chicago, etc.....	Sacramento.....	300	181.9	118.1
	Reno.....	429	181.9	348.0
Group E, including Mississippi River.....	Sacramento.....	300	174.5	125.5
	Reno.....	429	174.5	254.5
Group F, including Missouri River.....	Sacramento.....	300	188.3	140.7
	Reno.....	429	188.3	240.7

Neither at the hearings nor in the argument did the carriers east of Ogden contend that their divisions of these rates were unreasonable. The Southern Pacific, however, the carrier which makes the last 700 miles of a 3,100-mile haul, strenuously insists that its rates to the more distant points are compelled by water competition for the purpose of defending higher rates to intermediate points; while the carriers performing 2,400 miles of that service appear to regard the rate as entirely reasonable. The line from New York to Sacramento and Reno constitutes a through route and in law the carriers engaging therein constitute one line. If the Sacramento rate is less than a reasonable rate and the result of competition then it would seem fair to assume that all of the carriers engaging in the transportation so consider it and would accordingly demand a lesser division than the division they would be justified in requiring out of the higher rate to the intermediate point. The fact remains, however, that for the 2,400-mile haul from New York to Ogden the New York Central, the Lake Shore, the North Western, and the Union Pacific secure the same revenue out of the \$3 rate to Sacramento that they

do out of the \$4.29 rate to Reno. This is graphically illustrated by the following diagram showing the division of the rate:



PRODUCTIVE FREIGHT TERRITORY.

We have gone extensively into an investigation of the conditions surrounding this traffic and in anywise governing the basis upon which the rates to Nevada from the east should be governed. What has been said herein gives little more than a suggestion of the extent of the inquiry which has been made. We have, for instance, had reports made upon the financial condition of the carriers involved, and their ability to meet any reduction which the Commission might direct without serious impairment of their revenues, an interesting fact in this connection being this: During the past two years the operating revenues of the Southern Pacific Company's Pacific system have increased \$8,000,000 while its operating expenses have decreased \$5,000,000, thus producing an increased operating income of over \$12,000,000, or a net increase of about \$2,000 per mile of road.

There appears in the record a compilation from the statistics of this Commission for the years 1898-1907 in which it is shown that in these ten years the carriers in the Pacific coast territory doubled

their freight tonnage, which rose from 18,000,000 to 35,000,000 tons; almost doubled their gross revenue; their receipts per mile increased over 70 per cent; their receipts per ton per mile increased from 1.07 to 1.25, or about 20 per cent; while the relation of expenses to earnings remained practically constant at 62.50 per cent. These figures are for all the roads in the Pacific territory. But if we take the Central Pacific alone we find it third in the list of Pacific coast roads in tons carried and the highest of all in freight earnings per mile (\$13,453 per mile in 1907). While it is one of three railroads in the west carrying over a million tons of freight per mile of road—the average for the United States—the earnings of the Central Pacific per mile are 65 per cent greater than the average for the United States and 100 per cent greater than the average of the roads west of Chicago.

CONCLUSIONS.

The time has come, in our opinion, when the carriers west of the Rocky Mountains must treat the intermountain country upon a different basis from that which has hitherto obtained.

Nevada asks that she be given rates as low as those given to Sacramento. The full extent of this petition can not be granted. In making rates to Reno from a territory broader than the whole of continental Europe we have necessarily given consideration to existing rates to other intermediate points and to points upon the Pacific.

We are of opinion that the class rates to Reno, Winnemucca, and Elko, and other points in Nevada upon the main line of the Southern Pacific Company, from stations on the lines of the defendants between New York and Denver and other Colorado common points are unreasonable and unjust and that for the future no higher rates than those set forth below should be charged to Reno and points east thereof to, but not including, Winnemucca:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J.....	\$2.10	\$1.82	\$1.64	\$1.33	\$2.12	\$1.12	\$0.87	\$0.70	\$0.66	\$0.60
Grand Island and other points in Group G.....	2.30	2.00	1.68	1.45	1.22	1.22	.96	.78	.73	.65
Omaha and other points in Group F.....	2.50	2.17	1.83	1.58	1.33	1.33	1.04	.83	.79	.71
Clinton and other points in Group E.....	2.50	2.42	2.03	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago and other points in Group D.....	2.90	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Toledo and other Cincinnati-Detroit common points.....	3.65	2.63	2.19	1.81	1.52	1.56	1.23	.98	.92	.83
Buffalo and other Pittsburg-Buffalo common points.....	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.88
New York and common points.....	3.50	3.01	2.49	2.00	1.67	1.75	1.38	1.11	1.03	.93

* As designated in Transcontinental Freight Bureau Westbound Tariff 1-K, I. C. C. No. 920.

† As designated in Nor. Pac. No. 24506, I. C. C. No. 3206.

And that for the future no higher rates than those set forth below should be charged to Winnemucca and points east thereof to the Nevada-Utah state line:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J a.....	\$2.00	\$1.73	\$1.46	\$1.20	\$1.00	\$1.00	\$0.83	\$0.67	\$0.53	\$0.37
Grand Island and other points in Group G a.....	2.19	1.90	1.60	1.35	1.15	1.15	.91	.73	.60	.43
Omaha and other points in Group F a.....	2.35	2.06	1.74	1.50	1.25	1.25	.99	.79	.75	.57
Clinton and other points in Group E a.....	2.65	2.30	1.93	1.62	1.35	1.30	1.06	.85	.83	.74
Chicago and other points in Group D a.....	2.75	2.38	1.99	1.66	1.40	1.43	1.07	.89	.85	.78
Toledo and other Cincinnati-Detroit common points b.....	2.90	2.50	2.08	1.73	1.44	1.48	1.17	.93	.87	.79
Buffalo and other Pittsburg-Buffalo common points b.....	3.04	2.62	2.18	1.78	1.49	1.44	1.23	.98	.91	.83
New York and common points b.....	3.33	2.86	2.37	1.90	1.59	1.56	1.31	1.05	.98	.89

a As designated in Transcontinental Freight Bureau Warbound Tariff 1-K, I. C. C. No. 520.

b As designated in Nor. Pac. No. 22509, I. C. C. No. 3294.

In directing the carriers to establish these class rates we have taken into consideration the fact that the general policy of the carriers is to make commodity rates somewhat lower than class rates on commodities, the movement of which is regarded as necessary to the development of mercantile interests and industries. There are at present, as we have seen, a considerable number of such commodity rates into Reno, but these are entirely insufficient to meet the needs of Nevada if she is to become in any way an independent business community. There is no foundation in the record in this case for the establishment of such commodity rates. The theory upon which the case was presented eliminated all other considerations excepting the claim that all rates extended to Sacramento were reasonable as to Reno and other Nevada points. The Nevada petition was tantamount to a request that under our legal authority to establish reasonable rates we should fix the same rate from Denver as from Boston. We do not so construe our authority as to permit this Commission to make rates upon such a basis. Without doubt the commodity rates made to the coast terminals are reasonable from a great portion of eastern defined territory, but a governmental authority may not exercise the latitude in fixing a rate blanket which the carriers themselves have here exercised.

In the *Spokane case*, 19 I. C. C. Rep. 162, some 600 commodity rates had been established voluntarily by the carriers, and the petition in that case was for the reduction of those rates to a reasonable figure. The carriers had made a special series of zones across the continent to meet the exigencies of the Spokane situation. In the case before us, however, no such favorable condition is presented. We have neither a schedule of commodity rates with which to deal as to which specific complaint is made, nor have the carriers so divided the continent into

groups of originating territory, save in the sense that the transcontinental groups to the coast terminals, which are entirely different from those found in the *Spokane case, supra*, furnish a foundation for present combination rates to western Nevada.

In view of this situation we shall make no order as to commodity rates in this case at the present time, but shall direct the carriers to make a record of all shipments into Nevada from eastern defined territory during the months of July, August, and September, 1910, or during such other representative months as may be determined upon by the Commission after conference with the carriers, and furnish the Commission with a statement showing as to each shipment the following facts:

(1) The commodity; (2) the weight, carload or less than carload; (3) point of origin and the transcontinental territorial group in which the same is situated; (4) rate that would be applied under the tariffs in effect July 1, 1910; (5) the gross charges thereunder; (6) the rate applicable under the order made in this case; (7) the gross charges thereunder; (8) the rate that would be applied were the movement to Sacramento; (9) the gross charges thereunder.

The complainant will be ordered in this case, on or before October 1, 1910, to furnish to the Commission and to the defendant Southern Pacific Company a list of commodities upon which commodity rates are desired, together with an outline of the various territories or groups from which commodity rates should apply.

We are of the opinion that justice can not be done to Nevada unless Nevada points are put on a practical parity with points in eastern Washington and eastern Oregon, and a further hearing will, in due course, be held after the data here requested have been furnished by carriers and complainant.

BEFORE THE

Interstate Commerce Commission.

FOURTH SECTION ORDER NO. 124.

IN THE MATTER OF THE APPLICATIONS, NOS 205, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF THE TRANS-CONTINENTAL FREIGHT BUREAU, BY R. H. COUNTISS, AGENT, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES MADE FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

July 31, 1911.

ORDER OF THE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of July, A. D. 1911.

Present:

JUDSON C. CLEMENTS,	} Commissioners.
CHARLES A. PROUTY,	
FRANKLIN K. LANE,	
EDGAR E. CLARK,	
JAMES S. HARLAN,	
CHARLES C. McCHORD,	
BALTHASAR H. MEYER,	

FOURTH SECTION ORDER NO. 124.

IN THE MATTER OF THE APPLICATIONS, NOS. 203, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF THE TRANSCONTINENTAL FREIGHT BUREAU, BY R. H. COUNTISS, AGENT, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES MADE FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

COMMODITY RATES.

These applications, as above numbered, on behalf of the Transcontinental Freight Bureau, ask for authority to continue rates from eastern points of shipment which are higher to intermediate points in Canada and in the States of Arizona, New Mexico, Idaho, California, Montana, Nevada, Oregon, Utah, and Washington, and other States east thereof, than to Pacific coast terminals.

Full investigation of the matters and things involved in these petitions, in so far as they concern westbound commodity rates, having been had,

It is ordered, That for the purposes of the disposition of these applications, the United States shall be divided into five zones, as described in the following manner:

(The transcontinental groups hereinafter described are as specified in R. H. Countiss, Agent's, Transcontinental Tariff I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called Line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of Transcontinental Group F, to the intersection of the Arkansas and Oklahoma State line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2, embraces all territory in the United States lying east of Line No. 1 and west of a line called Line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the State of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of Transcontinental Group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of Transcontinental Group C; thence follows the east boundary of Group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of Line No. 2 and north of the south boundary of Transcontinental Group C, and on and west of Line No. 3, which is the Buffalo-Pittsburg line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of Trunk Line Freight Association territory; thence follows the Ohio River to Huntington, W. Va.

Zone No. 4 embraces all territory in the United States east of Line No. 3 and north of the south boundary of Transcontinental Group C.

Zone No. 5 embraces all territory south and east of Transcontinental Group C.

It is further ordered, (1) That those portions of the above-numbered applications that request authority to maintain higher commodity rates from points in Zone No. 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective November 15, 1911; (2) that petitioners herein be, and they are hereby, authorized to establish and maintain, effective November 15, 1911, commodity rates from all points in zones numbered 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals; provided that the rates to intermediate points from points in zones numbered 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in Zone No. 2, 15 per

cent from points in Zone No. 3, and 25 per cent from points in Zone No. 4.

The Commission does not hereby approve any rates that may be established under this authority, all such rates being subject to complaint, investigation, and correction if they conflict with any other provisions of the act.

By the Commission:

JUDSON C. CLEMENTS, *Chairman.*

INTERSTATE COMMERCE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 28th day of September, A. D. 1914.

JAMES S. HARLAN,	Commissioners.
JUDSON C. CLEMENTS,	
EDGAR E. CLARK,	
CHARLES C. McCHORD,	
BALTHASAR H. MEYER,	
HENRY C. HALL,	
WINTHROP M. DANIELS,	

SUPPLEMENTAL FOURTH SECTION ORDER No. 124.

IN THE MATTER OF APPLICATION NO. 9574 OF R. H. COUNTISS, AGENT, FOR AND ON BEHALF OF CARRIERS PARTICIPATING IN HIS TARIFF I. C. C. NO. 975, FOR A MODIFICATION OF FOURTH SECTION ORDER NO. 124, AS AMENDED, ENTERED THE 10TH DAY OF JULY, 1914, IN THE MATTER OF APPLICATIONS NOS. 205, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF CARRIERS PARTIES TO TARIFFS THEREIN NAMED, BY R. H. COUNTISS, C. W. BULLEN, AND J. F. TUCKER, THEIR AGENTS, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO COMMODITY RATES FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

Upon further consideration of the matters and things involved in the above entitled matter,

It is ordered, That that portion of Fourth Section Order No. 124, as amended, which prescribes the territory included in Zone No. II,

be, and the same is hereby, amended, in so far as it relates to traffic destined to California terminals and points intermediate thereto, so that Zone No. II shall include the additional territory described as follows:

NORTHERN BOUNDARY LINE.—Including points located on a line beginning at Linton, N. Dak., thence via an imaginary line to but not including Wishek, N. Dak., thence just south of the line of the Minneapolis, St. Paul & Sault Sainte Marie Railway (but not including points thereon) to C., M. & St. P. Crossing (Monango), N. Dak., thence just west of the line of the Chicago, Milwaukee & St. Paul Railway to and including Edgeley, N. Dak., thence just east of the line of the Chicago, Milwaukee & St. Paul Railway from Edgeley to and including C., M. & St. P. Crossing (Monango), N. Dak., thence via the Minneapolis, St. Paul & Sault Sainte Marie Railway to Oakes, N. Dak., thence via the Chicago & Northwestern Railway to Newton, thence via the Great Northern Railway to Yarmouth, Minn., thence via the Great Northern Railway to Fargo, N. Dak., thence via the Great Northern Railway to Moorhead, Minn.

EASTERN BOUNDARY LINE.—Including points located on a line beginning at Moorhead, Minn., thence following the line of the Great Northern Railway through Yarmouth, Herman, Morris, and Benson to Wilmar, Minn., thence via an imaginary line through Hutchinson to but not including Norwood, Minn., on Minneapolis & St. Louis Railroad, thence just west of the Minneapolis & St. Louis Railroad to but not including St. James, Minn., thence just west of the line of the Chicago, St. Paul, Minneapolis & Omaha Railway to the southern boundary of the State of Minnesota, thence following the southern boundary of the State of Minnesota to Steen, Minn., thence via the Illinois Central Railroad to the western boundary of the State of Minnesota, thence following the eastern boundary of the State of South Dakota to McCook, S. Dak., on the Chicago, Milwaukee & St. Paul Railway.

WESTERN BOUNDARY LINE.—Including points located on a line beginning at Linton, N. Dak., thence via an imaginary line through Mobridge, S. Dak., on Chicago, Milwaukee & St. Paul Railway to Gettysburg, S. Dak., on Chicago & Northwestern Railway, thence via an imaginary line just east of the Chicago & Northwestern Railway to and including Blunt, S. Dak., thence following the line of the Chicago & Northwestern Railway to Pierre, S. Dak.

SOUTHERN BOUNDARY LINE.—Including points located on a line beginning at Pierre, S. Dak., thence following the north bank of the Missouri River to Yankton, S. Dak., thence via the Chicago, Milwaukee & St. Paul Railway through Vermillion and Elk Point to McCook, S. Dak.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from points of origin located in the territory hereinbefore described to California terminals, and to maintain higher rates to intermediate points, provided the rates to said intermediate points do not exceed the rates on the same commodities from the same points of origin to California terminals by more than 7 per cent.

The Commission does not hereby approve any rates that may be filed or continued under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the act.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.